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FILED FEB 25 1999

H. B. No. 1822

By Ron Garbano

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of air conditioning and refrigeration
contractors; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 2(7), Air Conditioning and Refrigeration
Contractor License Law (Article 8861, Vernon's Texas Civil
Statutes), is amended to read as follows:

(7) "Air conditioning and refrigeration maintenance
work" means repair work and all other work required for the
continued normal performance of an environmental air conditioning
system, commercial refrigeration system or equipment, or process
cooling or heating system. The term does not include the
installation of a total replacement of the system or the
installation or repair of boilers or pressure vessels that must be
installed ~~[by-licensed-persons]~~ pursuant to rules and regulations
adopted by the commissioner under Chapter 755, Health and Safety
Code.

SECTION 2. Section 3(b), Air Conditioning and Refrigeration
Contractor License Law (Article 8861, Vernon's Texas Civil
Statutes), is amended to read as follows:

(b) The commissioner may issue an emergency order, including
a cease and desist order, as necessary to enforce this Act if the
commissioner determines that an emergency exists requiring
immediate action to protect the public health and safety. The

1 order may be issued without notice and hearing or with any notice
2 and hearing that the commissioner considers practicable under the
3 circumstances. If an emergency order is issued under this
4 subsection without a hearing, the commissioner shall set the time
5 and place for a hearing to affirm, modify, or set aside the
6 emergency order.

7 SECTION 3. Section 3B, Air Conditioning and Refrigeration
8 Contractor License Law (Article 8861, Vernon's Texas Civil
9 Statutes), is amended to read as follows:

10 Sec. 3B. REQUIREMENTS TO PERFORM AIR CONDITIONING AND
11 REFRIGERATION CONTRACTING [~~LICENSE-REQUIRED~~]. (a) A [~~Unless the~~
12 ~~person is exempted under Section 6 of this Act, a~~] person may not
13 perform air conditioning and refrigeration contracting unless:

14 (1) the person is exempt under Section 6 of this Act;
15 or

16 (2) the person practices within the scope of a
17 municipal license as permitted by Section 9 of this Act [~~without a~~
18 ~~license under this Act~~].

19 (b) A person, corporation, partnership, or other legal
20 entity may not offer to perform or perform air conditioning and
21 refrigeration contracting unless the person, corporation,
22 partnership, or other legal entity:

23 (1) employs full-time at each permanent office of the
24 person, corporation, partnership, or other legal entity at least
25 one licensee whose license qualifies the person for all of the air
26 conditioning and refrigeration contracting performed or offered to
27 be performed by that office;

1 (2) files with the advisory board the name of at least
2 one person who meets the requirements of Subdivision (1) of this
3 subsection; and

4 (3) uses only appropriately licensed individuals and
5 the assistants of appropriately licensed individuals to perform air
6 conditioning and refrigeration contracting.

7 (c) If a person whose name is on file with the advisory
8 board as required by Subsection (b)(2) of this section no longer
9 meets the requirements of Subsection (b)(1) of this section, the
10 person, corporation, partnership, or other legal entity that
11 qualifies under Subsection (b) of this section to offer to perform
12 and to perform air conditioning and refrigeration contracting shall
13 comply with Subsection (b)(2) of this section not later than the
14 30th day after the first day the person whose name is on file with
15 the advisory board no longer meets the requirements of Subsection
16 (b)(1) of this section.

17 SECTION 4. Sections 4(f) and (g), Air Conditioning and
18 Refrigeration Contractor License Law (Article 8861, Vernon's Texas
19 Civil Statutes), are amended to read as follows:

20 (f) The application must be made on a form prescribed by the
21 commissioner and must specify the class of license and each
22 endorsement the applicant seeks. The application must be verified
23 and must be accompanied by:

24 (1) [~~evidence-of-the-insurance-coverage-required-under~~
25 ~~this-Act,~~

26 [~~2~~] a statement of the applicant's practical
27 experience; and

1 (2) [~~3~~] the examination fee.

2 (g) The commissioner shall issue an air conditioning and
3 refrigeration contractor license to an applicant who possesses the
4 required qualifications, passes the appropriate examinations,
5 furnishes evidence of the insurance coverage required under this
6 Act, and pays the [~~examination-fee-and-the~~] original license fee
7 required by this Act. An applicant who fails an examination is
8 eligible for reexamination.

9 SECTION 5. Section 5(a), Air Conditioning and Refrigeration
10 Contractor License Law (Article 8861, Vernon's Texas Civil
11 Statutes), is amended to read as follows:

12 (a) A violation of this Act or a rule adopted under this Act
13 is a ground for the denial, suspension, or revocation of a license
14 issued under this Act. The failure to provide proper installation,
15 service, or [~~and~~] mechanical integrity under this Act constitutes a
16 violation of this Act. An intentional or knowing misrepresentation
17 of necessary services, services to be provided, or services that
18 have been provided, or a fraudulent promise made to influence,
19 persuade, or induce an individual to contract for services
20 constitutes a violation of this Act and a ground for the suspension
21 or revocation of a license issued under this Act.

22 SECTION 6. Section 6(a), Air Conditioning and Refrigeration
23 Contractor License Law (Article 8861, Vernon's Texas Civil
24 Statutes), is amended to read as follows:

25 (a) Except as provided by Section 10 of this Act, this
26 [~~This~~] Act does not apply to a person who:

27 (1) performs air conditioning and refrigeration

1 contracting in a building owned solely by the person [him] as the
2 person's [his] home;

3 (2) performs air conditioning or refrigeration
4 maintenance work if (i) the person is a maintenance person [man] or
5 maintenance engineer who is a regular bona fide employee of the
6 property owner, the property lessee, or the management company
7 managing the property where the maintenance work is being
8 performed, (ii) the work is performed in connection with the
9 business in which the person is employed, and (iii) the person and
10 the person's employer referred to in (i) above do not engage in the
11 occupation of air conditioning and refrigeration contracting for
12 the general public;

13 (3) performs air conditioning and refrigeration
14 contracting and is regularly employed by a regulated electric or
15 gas utility;

16 (4) is licensed as a professional engineer under The
17 Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil
18 Statutes), performs work in connection with the business in which
19 the person is employed, and does not engage in the practice of air
20 conditioning and refrigeration contracting for the general public;

21 (5) performs process cooling or heating work for an
22 industrial operation such as a chemical plant, petrochemical plant,
23 refinery, natural gas plant, or natural gas treating plant when
24 employed by that operation;

25 (6) performs air conditioning and refrigeration
26 contracting on:

27 (A) a portable or self-contained ductless air

1 conditioning or refrigeration product that has a cooling capacity
2 of three tons or less;

3 (B) a portable or self-contained heating product
4 that does not require the forced movement of air outside the
5 heating unit; or

6 (C) environmental air conditioning equipment
7 that is intended for temporary use and is not fixed in place; or

8 (7) performs air conditioning services only on a motor
9 vehicle air conditioner [~~conditioning-unit~~] or who employs a person
10 who performs air conditioning services only on a motor vehicle air
11 conditioner [~~conditioning-unit~~].

12 SECTION 7. Section 7, Air Conditioning and Refrigeration
13 Contractor License Law (Article 8861, Vernon's Texas Civil
14 Statutes), is amended to read as follows:

15 Sec. 7. REPORTING REQUIREMENT. (a) Each person licensed
16 under this Act shall notify the municipal authority who has control
17 of the enforcement of regulations relative to air conditioning and
18 refrigeration contracting in the municipality in which the person
19 is engaged in air conditioning and refrigeration contracting that
20 the person has obtained a state license.

21 (b) The notification must be in the form required by the
22 municipality.

23 (c) A municipal authority may impose a fee to process a
24 notification under this section in an amount reasonable and
25 necessary to cover the municipality's cost of administering this
26 section.

27 SECTION 8. The Air Conditioning and Refrigeration Contractor

1 License Law (Article 8861, Vernon's Texas Civil Statutes) is
2 amended by adding Section 7A to read as follows:

3 Sec. 7A. ENFORCEABILITY OF CERTAIN CONTRACTS. (a) A
4 person, corporation, partnership, or other legal entity may not
5 enforce a contract or collect a fee for air conditioning and
6 refrigeration contracting unless the person, corporation,
7 partnership, or other legal entity meets the requirements of
8 Section 3B of this Act at the time the contract is entered into and
9 at the time the contract is performed.

10 (b) The commissioner shall adopt rules relating to the
11 manner in which proof may be presented under this section.

12 SECTION 9. Section 8, Air Conditioning and Refrigeration
13 Contractor License Law (Article 8861, Vernon's Texas Civil
14 Statutes), is amended to read as follows:

15 Sec. 8. PENALTY. Except as provided in Section 9, a person
16 commits an offense if the person knowingly or intentionally engages
17 in air conditioning and refrigeration contracting without a license
18 issued under this Act. An offense under this section is a Class C
19 [B] misdemeanor.

20 SECTION 10. The Air Conditioning and Refrigeration
21 Contractor License Law (Article 8861, Vernon's Texas Civil
22 Statutes) is amended by adding Section 8A to read as follows:

23 Sec. 8A. ENFORCEMENT. (a) A municipal or county law
24 enforcement officer may issue a citation for a violation of Section
25 3B of this Act.

26 (b) A representative of the department or a municipal air
27 conditioning or refrigeration inspector within the jurisdiction of

1 the municipality may issue a citation to a person who violates
2 Section 10(e) or (f) of this Act.

3 SECTION 11. Section 9, Air Conditioning and Refrigeration
4 Contractor License Law (Article 8861, Vernon's Texas Civil
5 Statutes), is amended to read as follows:

6 Sec. 9. MUNICIPAL REGULATION. (a) A license issued by a
7 municipality of this state that meets the requirements of this
8 section is valid under the terms of the license within that
9 municipality. However, a license issued by the commissioner [~~under~~
10 ~~this-Act~~] is valid throughout the state, and the license holder and
11 people under the supervision of the license holder are not required
12 to hold a municipal license to practice air conditioning and
13 refrigeration contracting in any municipality within this state.

14 (b) An applicant for a municipal license must:

15 (1) pass an examination that covers the same subjects
16 that are covered by an examination required by the commissioner for
17 the type of work to be permitted by the municipal license; and

18 (2) meet the experience requirement that is at least
19 equivalent to the experience requirement in Section 4(e) of this
20 Act.

21 (c) A municipality may by ordinance adopt and enforce
22 standards for air conditioning and refrigeration contractors that
23 are consistent with the standards established under this Act. The
24 municipality shall report violations of the ordinance to the
25 commissioner not later than the 10th day after the date on which
26 the municipality takes action to enforce the ordinance. Conviction
27 of an offense under the municipal ordinance is a ground for the

1 denial, suspension, or revocation of a license issued under this
2 Act.

3 SECTION 12. Sections 10(g) and (h), Air Conditioning and
4 Refrigeration Contractor License Law (Article 8861, Vernon's Texas
5 Civil Statutes), are amended to read as follows:

6 (g) A purchaser may purchase refrigerants if that person's
7 use is exempt under Section 6(a)(1), (3), (5), (6), or (7) of this
8 Act if the person is authorized to do so under other state or
9 federal law and is not required to provide to a seller evidence of
10 the exemption.

11 (h) A person commits an offense if the person purchases a
12 refrigerant or equipment containing a refrigerant in this state in
13 violation of Subsection (c), (e), or (f) of this section. An
14 offense under this subsection is a Class C [B] misdemeanor.

15 SECTION 13. Section 23(c), The Real Estate License Act
16 (Article 6573a, Vernon's Texas Civil Statutes), is amended by
17 adding Subdivision (4) to read as follows:

18 (4) In addition to the license requirements imposed
19 under Subdivisions (1)-(3) of this subsection, a business entity
20 that inspects an environmental air conditioning system, commercial
21 refrigeration system, or process cooling or heating system as part
22 of a real estate inspection conducted under this Act must employ a
23 person who holds the appropriate air conditioning and refrigeration
24 contractor licenses and endorsements under the Air Conditioning and
25 Refrigeration Contractor License Law (Article 8861, Vernon's Texas
26 Civil Statutes) or an appropriate municipal license. An employee
27 who does not hold a license or endorsement under the Air

1 Conditioning and Refrigeration Contractor License Law (Article
2 8861, Vernon's Texas Civil Statutes) or a municipal license may
3 perform the inspection under the direction of the license holder.
4 For purposes of this Act, "inspection" of environmental air
5 conditioning, commercial refrigeration, and process cooling and
6 heating equipment means an inspection that includes the use of
7 electronic instruments, gauges, thermometers, mechanical
8 instruments, or other meters that require direct in-line connection
9 to the refrigerant system.

10 SECTION 14. Section 3(m), Air Conditioning and Refrigeration
11 Contractor License Law (Article 8861, Vernon's Texas Civil
12 Statutes), is repealed.

13 SECTION 15. Section 7(c), Air Conditioning and Refrigeration
14 Contractor License Law (Article 8861, Vernon's Texas Civil
15 Statutes), as added by this Act, applies only to a fee imposed for
16 a notification processed on or after the effective date of this
17 Act.

18 SECTION 16. Section 7A, Air Conditioning and Refrigeration
19 Contractor License Law (Article 8861, Vernon's Texas Civil
20 Statutes), as added by this Act, applies only to a contract entered
21 into on or after the effective date of this Act. A contract
22 entered into before the effective date of this Act is governed by
23 the law in effect on the day the contract was entered into, and the
24 former law is continued in effect for that purpose.

25 SECTION 17. (a) Except as provided by Subsection (b) of
26 this section, the punishment for an offense under Section 8 or
27 10(h), Air Conditioning and Refrigeration Contractor License Law

1 (Article 8861, Vernon's Texas Civil Statutes), regardless of
2 whether the offense is committed before, on, or after the effective
3 date of the amendments to those sections made by this Act, is the
4 punishment provided by Section 8 or 10(h), Air Conditioning and
5 Refrigeration Contractor License Law (Article 8861, Vernon's Texas
6 Civil Statutes), as amended by this Act.

7 (b) This section does not apply to the punishment of a
8 defendant finally convicted before the effective date of the
9 amendments to Sections 8 and 10(h), Air Conditioning and
10 Refrigeration Contractor License Law (Article 8861, Vernon's Texas
11 Civil Statutes), made by this Act. The punishment for a final
12 conviction that exists immediately before the effective date of the
13 amendments to those sections made by this Act is unaffected by this
14 Act.

15 SECTION 18. (a) Except as provided by Subsection (b) of
16 this section, Section 9, Air Conditioning and Refrigeration
17 Contractor License Law (Article 8861, Vernon's Texas Civil
18 Statutes), as amended by this Act, applies only to a municipal
19 license that is issued or renewed on or after the effective date of
20 this Act. A municipality subject to that section shall adopt
21 examination requirements in compliance with that section not later
22 than January 1, 2000.

23 (b) To continue to engage in the practice of air
24 conditioning and refrigeration contracting after September 1, 1999,
25 a person who holds a municipal license on the effective date of
26 this Act must satisfy the examination requirements imposed under
27 Section 9(b), Air Conditioning and Refrigeration Contractor License

1 Law (Article 8861, Vernon's Texas Civil Statutes), as amended by
2 this Act, not later than June 1, 2000.

3 SECTION 19. (a) Except as provided by Subsection (b) of
4 this section, this Act takes effect September 1, 1999.

5 (b) Sections 6(a), 8, and 10(g) and (h), Air Conditioning
6 and Refrigeration Contractor License Law (Article 8861, Vernon's
7 Texas Civil Statutes), as amended by this Act, take effect
8 immediately.

9 (c) Not later than December 31, 1999, the commissioner of
10 licensing and regulation shall adopt rules as required by Section
11 7A, Air Conditioning and Refrigeration Contractor License Law
12 (Article 8861, Vernon's Texas Civil Statutes), as added by this
13 Act.

14 (d) Section 23(c), The Real Estate License Act (Article
15 6573a, Vernon's Texas Civil Statutes), as amended by this Act,
16 applies only to a real estate inspection that is conducted on or
17 after the effective date of this Act. A real estate inspection
18 conducted before that date is governed by the law in effect on the
19 date that the inspection occurs, and the former law is continued in
20 effect for that purpose.

21 SECTION 20. The importance of this legislation and the
22 crowded condition of the calendars in both houses create an
23 emergency and an imperative public necessity that the
24 constitutional rule requiring bills to be read on three several
25 days in each house be suspended, and this rule is hereby suspended,
26 and that this Act take effect and be in force according to its
27 terms, and it is so enacted.

HOUSE COMMITTEE REPORT

1 1st Printing

By Yarbrough

H.B. No. 1822

Substitute the following for H.B. No. 1822:

By Moreno of Harris

C.S.H.B. No. 1822

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of air conditioning and refrigeration contractors; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subdivisions (7) and (9), Section 2, Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), are amended to read as follows:

(7) "Air conditioning and refrigeration maintenance work" means repair work and all other work required for the continued normal performance of an environmental air conditioning system, commercial refrigeration system or equipment, or process cooling or heating system. The term does not include the installation of a total replacement of the system or the installation or repair of boilers or pressure vessels that must be installed [~~by--licensed-persons~~] pursuant to rules and regulations adopted by the commissioner under Chapter 755, Health and Safety Code.

(9) "Air conditioning and refrigeration contracting" means to perform or offer to perform the design, installation, construction, maintenance, service, repair, alteration, or modification of a product or of equipment in environmental air conditioning, commercial refrigeration, or process cooling or heating systems.

1 SECTION 2. Section 2, Air Conditioning and Refrigeration
2 Contractor License Law (Article 8861, Vernon's Texas Civil
3 Statutes) is amended by adding Subdivision (14), to read as
4 follows:

5 (14) "Air conditioning and refrigeration contracting
6 company" means any person, sole proprietorship, corporation,
7 partnership, association, or other business entity that performs or
8 offers to perform air conditioning and refrigeration contracting to
9 the general public.

10 SECTION 3. Subdivisions (b) and (m), Section 3, Air
11 Conditioning and Refrigeration Contractor License Law (Article
12 8861, Vernon's Texas Civil Statutes), are amended to read as
13 follows:

14 (b) The executive director may issue an emergency order as
15 necessary to enforce this Act if the executive director determines
16 that an emergency exists requiring immediate action to protect the
17 public health and safety. The order may be issued without notice
18 and hearing or with any notice and hearing that the executive
19 director considers practicable under the circumstances. If an
20 emergency order is issued under this subsection without a hearing,
21 the executive director shall set the time and place for a hearing
22 to affirm, modify, or set aside the emergency order. The executive
23 director may issue cease and desist orders.

24 (m) A representative of the Department [~~commission~~] or a
25 municipal air conditioning or refrigeration inspector within the
26 jurisdiction of the municipality may issue a citation to a person
27 who violates Section 10(e) or (f) of this Act.

1 SECTION 4. Section 3B, Air Conditioning and Refrigeration
2 Contractor License Law (Article 8861, Vernon's Texas Civil
3 Statutes), is amended to read as follows:

4 Sec. 3B. LICENSE REQUIRED; CITATION. (a) Unless the person
5 is exempted under Section 6 of this Act, a person may not perform
6 air conditioning and refrigeration contracting without a license
7 under this Act.

8 (b) An air conditioning and refrigeration contracting
9 company must employ full time in each permanent office a license
10 holder whose license is assigned to that company.

11 (c) A municipal or county official may issue a citation to
12 an air conditioning and refrigeration contracting company which
13 performs air conditioning and refrigeration contracting without a
14 license issued under this Act, if the person is not exempt from the
15 provisions of this Act.

16 SECTION 5. The Air Conditioning and Refrigeration Contractor
17 License Law (Article 8861, Vernon's Texas Civil Statutes) is
18 amended by adding Section 3C to read as follows:

19 Sec. 3C. ENFORCEMENT OF CONTRACTS. An air conditioning and
20 refrigeration contracting company that performs air conditioning
21 and refrigeration contracting without employing a licensee with the
22 appropriate license under this Act may not collect a fee or
23 otherwise enforce a contract for the services performed. To
24 enforce a contract for the performance of air conditioning and
25 refrigeration contracting, the air conditioning and refrigeration
26 contracting company that performs the services must have been
27 licensed at the time the contract is signed and at the time the

1 work is performed.

2 SECTION 6. Subsections (f) and (g), Section 4, Air
3 Conditioning and Refrigeration Contractor License Law (Article
4 8861, Vernon's Texas Civil Statutes), are amended to read as
5 follows:

6 (f) The application must be made on a form prescribed by the
7 commissioner and must specify the class of license and each
8 endorsement the applicant seeks. The application must be verified
9 and must be accompanied by:

10 (1) [~~evidence-of-the-insurance-coverage-required-under~~
11 ~~this-Act,~~

12 [~~+~~2] a statement of the applicant's practical
13 experience; and

14 (2) [~~+~~3] the examination fee

15 (g) The executive director [~~commissioner~~] shall issue an air
16 conditioning and refrigeration contractor license to an applicant
17 who possesses the required qualifications, passes the appropriate
18 examinations, furnishes evidence of the insurance coverage required
19 under this Act, and pays the [~~examination--fee--and--the~~] original
20 license fee required by this Act. An applicant who fails an
21 examination is eligible for reexamination.

22 SECTION 7. Section 5, Air Conditioning and Refrigeration
23 Contractor License Law (Article 8861, Vernon's Texas Civil
24 Statutes), is amended to read as follows:

25 (a) A violation of this Act or a rule adopted under this Act
26 is a ground for the denial, suspension, or revocation of a license
27 issued under this Act. The failure to provide proper installation,

1 service, or [and] mechanical integrity under this Act constitutes a
2 violation of this Act. An intentional or knowing misrepresentation
3 of necessary services, services to be provided, or services that
4 have been provided, or a fraudulent promise made to influence,
5 persuade, or induce an individual to contract for services
6 constitutes a violation of this Act and a ground for the suspension
7 or revocation of a license issued under this Act.

8 SECTION 8. Section 6, Subsection (a)(6), Air Conditioning
9 and Refrigeration Contractor License Law (Article 8861, Vernon's
10 Texas Civil Statutes), is amended to read as follows:

11 (6) performs air conditioning and refrigeration
12 contracting on:

13 (A) a portable or self-contained ductless air
14 conditioning [~~or-refrigeration~~] product that has a cooling capacity
15 of three tons or less;

16 (B) a portable or self-contained heating product
17 that does not require the forced movement of air outside the
18 heating unit; or

19 (C) environmental air conditioning equipment
20 that is intended for temporary use and is not fixed in place; or

21 (D) residential refrigerators, freezers, and ice
22 machines;

23 SECTION 9. Section 7, Air Conditioning and Refrigeration
24 Contractor License Law (Article 8861, Vernon's Texas Civil
25 Statutes), is amended to read as follows:

26 Sec. 7. REPORTING REQUIREMENT. (a) Each person licensed
27 under this Act shall notify the municipal authority who has control

1 of the enforcement of regulations relative to air conditioning and
2 refrigeration contracting in the municipality in which the person
3 is engaged in air conditioning and refrigeration contracting that
4 the person has obtained a state license.

5 (b) The notification must be in the form required by the
6 municipality.

7 (c) The amount of a fee imposed by a municipality on a
8 contractor to provide notice under this section may be set by the
9 municipality only in an amount reasonable and necessary to
10 implement this section.

11 SECTION 10. Section 8, Air Conditioning and Refrigeration
12 Contractor License Law (Article 8861, Vernon's Texas Civil
13 Statutes), is amended to read as follows:

14 Sec. 8. PENALTY. Except as provided in Section 9, a person
15 commits an offense if the person knowingly or intentionally engages
16 in air conditioning and refrigeration contracting without a license
17 issued under this Act. An offense under this section is a Class C
18 [B] misdemeanor.

19 SECTION 11. Section 9, Air Conditioning and Refrigeration
20 Contractor License Law (Article 8861, Vernon's Texas Civil
21 Statutes), is amended to read as follows:

22 Sec. 9. MUNICIPAL REGULATION. (a) A license issued by a
23 municipality of this state that complies with the requirements of
24 this section is valid under the terms of the license within that
25 municipality. However, a license issued [~~under this Act~~] by the
26 Department is valid throughout the state, and the holder and people
27 under supervision are not required to hold a municipal license to

1 practice air conditioning and refrigeration contracting in any
2 municipality within this state.

3 (b) An applicant for a municipal license must:

4 (1) pass an examination that covers the same subjects
5 as the examination required by the commissioner for an air
6 conditioning and refrigeration contractor license of the class of
7 work that the municipal applicant proposes to perform; and

8 (2) meet experience requirements that are at least as
9 strict as those required under Section 4(e) of this Act for an air
10 conditioning and refrigeration contractor license.

11 (c) A municipality may by ordinance adopt and enforce
12 standards for air conditioning and refrigeration contractors that
13 are consistent with the standards established under this Act. The
14 municipality shall report violations of the ordinance to the
15 commissioner not later than the 10th day after the date on which
16 the municipality takes action to enforce the ordinance. Conviction
17 of an offense under the municipal ordinance is a ground for the
18 denial, suspension, or revocation of a license issued under this
19 Act.

20 SECTION 12. Subsection (c), Section 23, The Real Estate
21 License Act (Article 6573a, Vernon's Texas Civil Statutes), is
22 amended by adding Subdivision (4) to read as follows:

23 (4) In addition to the license requirements imposed
24 under Subdivisions (1), (2), and (3) of this subsection, a business
25 entity that inspects an environmental air conditioning system,
26 commercial refrigeration system, or process cooling or heating
27 system as part of a real estate inspection conducted under this Act

1 must employ a person who holds the appropriate air conditioning
2 and refrigeration contractor licenses and endorsements under the
3 Air Conditioning and Refrigeration Contractor License Law (Article
4 8861, Vernon's Texas Civil Statutes), or an appropriate municipal
5 license. An employee who does not hold a license may perform the
6 inspection under the direction of a licensee licensed under this
7 Act. For purposes of this Act, "inspection" of environmental air
8 conditioning, commercial refrigeration, and process cooling and
9 heating equipment means an inspection that includes the use of
10 electronic instruments, gauges, thermometers, mechanical
11 instruments, or other meters that require direct in-line connection
12 to the refrigeration system.

13 SECTION 13. (a) The change in law made to Section 8, Air
14 Conditioning and Refrigeration Contractor License Law (Article
15 8861, Vernon's Texas Civil Statutes), by this Act applies only to
16 an offense committed on or after the effective date of this Act.
17 For purposes of this section, an offense is committed before the
18 effective date of this Act if any element of the offense occurs
19 before that date.

20 (b) An offense committed before the effective date of this
21 Act is governed by the law in effect when the offense was
22 committed, and the former law is continued in effect for that
23 purpose.

24 SECTION 14. (a) Except as provided by Subsection (b) of
25 this section, the change in law made to Section 9, Air Conditioning
26 and Refrigeration Contractor License Law (Article 8861, Vernon's
27 Texas Civil Statutes), by this Act applies to a municipal license

1 that is issued or renewed on or after the effective date of this
2 Act. A municipality subject to that section shall adopt
3 examination requirements in compliance with that section not later
4 than January 1, 2000.

5 (b) To continue to engage in the practice of air
6 conditioning and refrigeration contracting after September 1, 1999,
7 a person who holds a municipal license on the effective date of
8 this Act must satisfy the examination requirements imposed under
9 Subsection (b), Section 9, Air Conditioning and Refrigeration
10 Contractor License Law (Article 8861, Vernon's Texas Civil
11 Statutes), as amended by this Act, not later than June 1, 2000.

12 SECTION 15. Subsection 10(h), Air Conditioning and
13 Refrigeration Contractor License Law (Article 8861, Vernon's Texas
14 Civil Statutes), is amended to read as follows:

15 (h) A person commits an offense if the person purchases a
16 refrigerant or equipment containing a refrigerant in this state in
17 violation of Subsection (c), (e), or (f) of this section. An
18 offense under this subsection is a Class C [B] misdemeanor.

19 SECTION 16. Section 10, Air Conditioning and Refrigeration
20 Contractor License Law (Article 8861, Vernon's Texas Civil
21 Statutes), is amended by adding Subsection (j), to read as follows:

22 (j) This Section does not apply to persons exempt under
23 Section 6(a)(3), (5), or (7) of this Act.

24 SECTION 17. (a) This Act takes effect September 1, 1999.

25 (b) Not later than December 31, 1999, the commissioner of
26 licensing and regulation shall adopt rules as required by Section
27 3C, Air Conditioning and Refrigeration Contractor License Law

1 (Article 8861, Vernon's Texas Civil Statutes), as added by this
2 Act.

3 (c) Subsection (c), Section 23, The Real Estate License Act
4 (Article 6573a, Vernon's Texas Civil Statutes), as amended by this
5 Act, applies only to a real estate inspection that is conducted on
6 or after the effective date of this Act. A real estate inspection
7 conducted before that date is governed by the law in effect on the
8 date that the inspection occurs, and the former law is continued in
9 effect for that purpose.

10 SECTION 18. The importance of this legislation and the
11 crowded condition of the calendars in both houses create an
12 emergency and an imperative public necessity that the
13 constitutional rule requiring bills to be read on three several
14 days in each house be suspended, and this rule is hereby suspended.

COMMITTEE REPORT

The Honorable James E. "Pete" Laney
Speaker of the House of Representatives

3/18/99
(date)

Sir:

We, your COMMITTEE ON LICENSING AND ADMINISTRATIVE PROCEDURES

to whom was referred HB 1822 have had the same under consideration and beg to report back with the recommendation that it

- ☐ do pass, without amendment.
☐ do pass, with amendment(s).
☒ do pass and be not printed; a Complete Committee Substitute is recommended in lieu of the original measure.
☒ yes ☐ no A fiscal note was requested.
☐ yes ☒ no A criminal justice policy impact statement was requested.
☐ yes ☒ no An equalized educational funding impact statement was requested.
☐ yes ☒ no An actuarial analysis was requested.
☐ yes ☒ no A water development policy impact statement was requested.
☐ yes ☒ no A tax equity note was requested.
☐ The Committee recommends that this measure be sent to the Committee on Local and Consent Calendars.

For Senate Measures: House Sponsor _____

Joint Sponsors: _____ / _____ / _____

Co-Sponsors: _____

The measure was reported from Committee by the following vote:

	AYE	NAY	PNV	ABSENT
Wilson, Chair	✓			
Yarbrough, Vice-chair	✓			
Flores				✓
Goolsby	✓			
Haggerty				✓
Jones, D.	✓			
Moreno, J.	✓			
Palmer				✓
Reyna, A.	✓			

Total
6 aye
0 nay
0 present, not voting
3 absent

Ron Wilson
CHAIR

BILL ANALYSIS

Office of House Bill Analysis

C.S.H.B. 1822
By: Yarbrough
Licensing & Administrative Procedures
3/22/1999
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, the Air Conditioning and Refrigeration Contractor License Law (Act) requires any air conditioning and refrigeration contractor doing business in Texas to hold either a municipal or a state license. It provides several exemptions from licensure, most notably for apartment maintenance staff. There are 11,000 licensed contractors in Texas, and they report that there may be that many unlicensed contractors operating outside the Act. The Act is administered by the Texas Department of Licensing and Regulation, and 60 percent of the department's investigations involve the Act.

The department has received funding to maintain only minimal enforcement of the Act. It has been able to investigate consumer complaints, but has not had adequate staff to pursue unlicensed contractors and bring them into compliance. C.S.H.B. 1822 clarifies provisions of the Act and strengthens penalties for operating as a contractor without a license.

RULEMAKING AUTHORITY

It is the opinion of the Office of House Bill Analysis that this bill does not expressly delegate rulemaking authority to state officer, department, agency, or institution.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2(7), Article 8861, V.T.C.S. (Air Conditioning and Refrigeration Contractor License Law), to add repair of boilers or pressure vessels and delete licensed persons in reference to operations not included under the term "air conditioning and refrigeration maintenance work." Defines "air conditioning and refrigeration contracting" as performing or offering to perform certain task on specified equipment.

SECTION 2. Amends Section 2, Article 8861, V.T.C.S., to define "air conditioning and refrigeration contracting company."

SECTION 3. Amends Sections 3(b) and (m), Article 8861, V.T.C.S., to authorize the executive director to issue a cease and desist order if the executive director determines that an emergency exists requiring immediate action to protect the public health and safety. Authorizes a representative of the Texas Department of Licensing and Regulation (department), rather than Texas Commission of Licensing and Regulation, to issue a citation for violation of Section 10(e) or (f) (Sale and Use of Refrigerants).

SECTION 4. Amends Section 3B, Article 8861, V.T.C.S., by creating Subsection (a) from existing text and adding Subsections (b) and (c), as follows:

Sec. 3B. New title: LICENSE REQUIRED; CITATION. (b) Provides that an air conditioning or refrigeration contracting company must employ full time at each permanent office at least one person licensed to perform the contracting, and whose license is assigned to the company.

(c) Authorizes a municipal or county official to issue a citation to an air conditioning and refrigeration contracting company that performs air conditioning and refrigeration contracting without the required license, unless exempt under this article.

SECTION 5. Amends Article 8861, V.T.C.S., by adding Section 3C, to prohibit an air conditioning or refrigeration contracting company from enforcing a contract or collecting a fee for air conditioning and refrigeration contracting unless a properly licensed person is employed at the time the contract is performed.

SECTION 6. Amends Sections 4(f) and (g), Article 8861, V.T.C.S., to delete from Subsection (f) the provision that an application for an air conditioning and refrigeration contractor license must be accompanied by evidence of required insurance coverage. Adds this requirement to Subsection (g), and deletes the requirement to pay an examination fee. Substitutes the executive director for the commissioner of licensing and regulation as the person required to issue a license. Makes conforming and nonsubstantive changes.

SECTION 7. Amends Section 5(a), Article 8861, V.T.C.S., to provide that failure to provide proper installation, service, or, rather than and, mechanical integrity constitutes a violation.

SECTION 8. Amends Section 6(a)(6), Article 8861, V.T.C.S., to specify an exemption for work performed on residential refrigerators, freezers, and ice machines.

SECTION 9. Amends Section 7, Article 8861, V.T.C.S., to create new Subsections (a) and (b) from existing text and add Subsection (c) authorizing a municipality to impose a reasonable fee necessary to cover the cost of the implementation of this section.

SECTION 10. Amends Section 8, Article 8861, V.T.C.S., to provide that a person commits a Class C, rather than Class B, misdemeanor by knowingly or intentionally engaging in air conditioning and refrigeration contracting without an appropriate license.

SECTION 11. Amends Section 9, Article 8861, V.T.C.S., to provide that an applicant for a municipal license must pass an examination covering the same subjects as the examination required by the department for the same type of work the applicant proposes to perform, and meet the experience requirement under Section 4(e), Article 8861, V.T.C.S. Makes conforming and nonsubstantive changes.

SECTION 12. Amends Section 23(c), Article 6573a, V.T.C.S. (The Real Estate License Act), by adding Subdivision (4), as follows:

(4) Provides that a business entity that inspects an environmental air conditioning system, commercial refrigeration system, or process cooling and heating system as part of a real estate inspection must employ a person who holds an appropriate air conditioning and refrigeration contracting license. Authorizes a person who does not hold an appropriate license to perform an inspection under the direction of a license holder. Defines "inspection."

SECTION 13. Makes application of Section 8, Article 8861, V.T.C.S., as changed by this Act prospective.

SECTION 14. Makes application of Section 9, Article 8861, V.T.C.S., as changed by this Act prospective. Requires a municipality subject to Section 9 to adopt examination requirements no later than January 1, 2000. Provides that a person who holds a municipal license must satisfy the examination requirements imposed by this Act no later than June 1, 2000, if that person continues the practice of contracting after September 1, 1999.

SECTION 15. Amends Sections 10(h), Article 8861, V.T.C.S., to provide that an offense under this section is a Class C, rather than Class B, misdemeanor

SECTION 16. Amends Section 10, Article 8861, V.T.C.S., by adding Subsection (j), to provide that a person is authorized to purchase refrigerants if the person is exempt under Section 6(a) because the person performs air conditioning and refrigeration contracting for an electric or gas utility, an industrial operation, on portable, self-contained, or temporary equipment, or in motor vehicles.

SECTION 17. Effective date: September 1, 1999. Requires that the commissioner of licensing and

regulation adopt rules as required by Section 3A, Article 8861, V.T.C.S., no later than December 31, 1999. Makes application of Section 23(c), Article 6573a, V.T.C.S., as changed by this Act prospective.

SECTION 18. Emergency clause.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B.1822 differs from the original bill in SECTION 1 by amending Subdivision (9) to add to the definition of "air conditioning and refrigeration contracting" the words "to perform or offer to perform" in reference to certain tasks on specified equipment.

C.S.H.B.1822 differs from the original bill by adding a new SECTION 2 to add a new Subdivision (14) to define "air conditioning and refrigeration contracting."

C.S.H.B.1822 differs from the original bill in SECTION 3 by authorizing the executive director, rather than the commissioner of licensing and regulation, to issue a cease and desist order. Redesignates SECTION 3 from SECTION 2 of the original.

C.S.H.B.1822 differs from the original bill in SECTION 4 by adding the new heading for Section 3B, LICENSE REQUIRED; CITATION, rather than REQUIREMENTS TO PERFORM AIR CONDITIONING AND REFRIGERATION CONTRACTING. It makes no change to the existing statutory text other than redesignating it as Subsection (a), and adds new Subsections (b) and (c). Redesignates SECTION 4 from SECTION 3 of the original.

- Subsection (b) provides that an air conditioning and refrigeration contracting company must employ a license holder at each permanent office whose license is assigned to the office, rather than prohibiting the company to operate without such a licensee and requiring it to file the person's name with the Air Conditioning and Refrigeration Contractors Advisory Board.
- Subsection (c) authorizes a municipal or county official to issue a citation to an air conditioning and refrigeration contracting company that performs air conditioning and refrigeration contracting without the required license, unless exempt under this article.
- Deletes provision requiring the person, corporation, partnership, or other legal entity performing or offering to perform air conditioning or refrigeration contracting, if that person is no longer appropriately licensed, to comply with appropriate license requirements within 30 days.

C.S.H.B.1822 differs from the original bill in SECTION 5 by making conforming and nonsubstantive changes. Redesignates SECTION 5 from SECTION 8 of the original. Rulemaking authority granted in SECTION 8 of the original is not present in SECTION 5 of the substitute.

C.S.H.B.1822 differs from the original bill in SECTION 6 by substituting the executive director for the commissioner of licensing and regulation as the person required to issue a license. Redesignates SECTION 6 from SECTION 4 of the original.

C.S.H.B.1822 differs from the original bill in SECTION 7 by redesignating from SECTION 5 of the original to SECTION 7 of the substitute.

C.S.H.B.1822 differs from the original bill in SECTION 8 by specifying an exemption for work performed on residential refrigerators, freezers, and ice machines. Redesignates SECTION 8 from SECTION 6 of the original. Deletes a reference in the original to SECTION 10 of that bill.

C.S.H.B.1822 differs from the original bill in SECTION 9 by redesignating from SECTION 7 of the original.

C.S.H.B.1822 differs from the original bill in SECTION 10 by redesignating from SECTION 9 of the original. Makes conforming and nonsubstantive changes.

Deletes Section. 8A. ENFORCEMENT. from SECTION 10 of the original. The authority previously found in that section is now conveyed to a municipal or county law enforcement officer to issue a citation in SECTION 4 of the substitute, and to a representative of the Texas Department of Licensing and Regulation in SECTION 3 of the substitute.

C.S.H.B.1822 differs from the original bill in SECTION 12 by redesignating from SECTION 13 of the original.

- Deletes the repealer of Section 3(m), Article 8861, V.T.C.S., which authorizes issuance of citations for violations of Section 10(e) or (f).

C.S.H.B.1822 differs from the original bill in SECTION 13 by changing the language regarding the application of the Act. While SECTION 17 of the original provided that the Act was allocable to offenses committed before, on, or after its effective date, SECTION 13 of the substitute provides that the Act applies only to an offense committed on or after its effective date.

C.S.H.B.1822 differs from the original bill in SECTION 14 by redesignating as SECTION 18 of the original to SECTION 14 of the substitute.

C.S.H.B.1822 differs from the original bill in SECTION 15 by dividing SECTION 12 of the original and inserting here the provision in Subsection (h) that an offense under this section is a Class C, rather than Class B, misdemeanor.

C.S.H.B.1822 differs from the original bill in SECTION 16 by inserting a new Subsection (j) providing that a person is authorized to purchase refrigerants if the person is exempt under Section 6(a) because the person performs air conditioning and refrigeration contracting for an electric or gas utility, an industrial operation, on portable, self-contained, or temporary equipment, or in motor vehicles. These exemptions were granted in Subsection (g) by SECTION 12 of the original.

C.S.H.B.1822 differs from the original bill in SECTION 17 by requiring that the commissioner of licensing and regulation adopt rules as required by Section 3A, Article 8861, V.T.C.S., no later than December 31, 1999 (Rulemaking authority granted in proposed new Section 7A, SECTION 8 of the original bill is deleted from the substitute.) Redesignates SECTION 17 from SECTION 19 of the original.

C.S.H.B.1822 differs from the original bill in SECTION 18 by redesignating from SECTION 20 of the original and by changing the emergency clause so that it does not provide that the Act take effect and be in force according to its terms.

SUMMARY OF COMMITTEE ACTION

HB 1822

March 17, 1999 2:00PM or upon adjournment
Considered in public hearing
Testimony taken in committee
Committee substitute considered in committee
Reported favorably as substituted

WITNESS LIST

HB 1822
HOUSE COMMITTEE REPORT
Licensing & Administrative Procedures Committee

March 17, 1999 - 2:00PM or upon adjournment

Air Conditioning and Refrigeration

For: Osgood, Jr., John (TX Air Conditioning Contractors
Assn)

Registering, but not testifying:

For: Jones, Nancy (TX Air Conditioning Contractors Assn.)

On: Denson, Pauline (TDLR)

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 76th Regular Session

March 21, 1999

TO: Honorable Ron Wilson, Chair, House Committee on Licensing & Administrative Procedures

FROM: John Keel, Director, Legislative Budget Board

IN RE: **HB1822** by Yarbrough (relating to the regulation of air conditioning and refrigeration contractors; providing penalties), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: JK, TH, CB

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 76th Regular Session

March 12, 1999

TO: Honorable Ron Wilson, Chair, House Committee on Licensing & Administrative Procedures

FROM: John Keel, Director, Legislative Budget Board

IN RE: **HB1822** by Yarbrough (Relating to the regulation of air conditioning and refrigeration contractors; providing penalties), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 452 Department of Licensing and Regulation
LBB Staff: JK, TH, CB

ADOPTED

MAY 07 1999

Sharon Carter
Chief Clerk
House of Representatives

Ken Garbino

By _____

H.B. No. 1822

Substitute the following for H.B. No. 1822:

By J. Moreno

C.S. H.B. No. 1822

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of air conditioning and refrigeration contractors; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subdivisions (7) and (9), Section 2, Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), are amended to read as follows:

(7) "Air conditioning and refrigeration maintenance work" means repair work and all other work required for the continued normal performance of an environmental air conditioning system, commercial refrigeration system or equipment, or process cooling or heating system. The term does not include the installation of a total replacement of the system or the installation or repair of boilers or pressure vessels that must be installed ~~[by--licensed-persons]~~ pursuant to rules and regulations adopted by the commissioner under Chapter 755, Health and Safety Code.

(9) "Air conditioning and refrigeration contracting" means to perform or offer to perform the design, installation, construction, maintenance, service, repair, alteration, or modification of a product or of equipment in environmental air conditioning, commercial refrigeration, or process cooling or heating systems.

1 SECTION 2. Section 2, Air Conditioning and Refrigeration
2 Contractor License Law (Article 8861, Vernon's Texas Civil
3 Statutes)^A is amended by adding Subdivision (14)^f to read as
4 follows:

5 (14) "Air conditioning and refrigeration contracting
6 company" means any person, sole proprietorship, corporation,
7 partnership, association, or other business entity that performs or
8 offers to perform air conditioning and refrigeration contracting to
9 the general public.

10 SECTION 3. Subdivisions (b) and (m), Section 3, Air
11 Conditioning and Refrigeration Contractor License Law (Article
12 8861, Vernon's Texas Civil Statutes), are amended to read as
13 follows:

14 (b) The executive director, may issue an emergency order as
15 necessary to enforce this Act if the executive director, determines
16 that an emergency exists requiring immediate action to protect the
17 public health and safety. The order may be issued without notice
18 and hearing or with any notice and hearing that the executive
19 director, considers practicable under the circumstances. If an
20 emergency order is issued under this subsection without a hearing,
21 the executive director, shall set the time and place for a hearing
22 to affirm, modify, or set aside the emergency order. The executive
23 director may issue cease and desist orders.

24 (m) A representative of the Department [commission] or a
25 municipal air conditioning or refrigeration inspector within the
26 jurisdiction of the municipality may issue a citation to a person
27 who violates Section 10(e) or (f) of this Act.

1 SECTION 4. Section 3B, Air Conditioning and Refrigeration
2 Contractor License Law (Article 8861, Vernon's Texas Civil
3 Statutes), is amended to read as follows:

4 Sec. 3B. LICENSE REQUIRED; CITATION. (a) Unless the person
5 is exempted under Section 6 of this Act, a person may not perform
6 air conditioning and refrigeration contracting without a license
7 under this Act.

8 (b) An air conditioning and refrigeration contracting
9 company must employ full time in each permanent office a license
10 holder whose license is assigned to that company.

11 (c) A municipal or county official may issue a citation to
12 an air conditioning and refrigeration contracting company which
13 performs air conditioning and refrigeration contracting without a
14 license issued under this Act, if the person is not exempt from the
15 provisions of this Act.

16 SECTION 5. The Air Conditioning and Refrigeration Contractor
17 License Law (Article 8861, Vernon's Texas Civil Statutes) is
18 amended by adding Section 3C to read as follows:

19 Sec. 3C. ENFORCEMENT OF CONTRACTS. An air conditioning and
20 refrigeration contracting company that performs air conditioning
21 and refrigeration contracting without employing a licensee with the
22 appropriate license under this Act may not collect a fee or
23 otherwise enforce a contract for the services performed. To
24 enforce a contract for the performance of air conditioning and
25 refrigeration contracting, the air conditioning and refrigeration
26 contracting company that performs the services must have been
27 licensed at the time the contract is signed and at the time the

1 work is performed.

2 SECTION 6. ~~Subsections (f) and (g)~~, Section 4, Air
3 Conditioning and Refrigeration Contractor License Law (Article
4 8861, Vernon's Texas Civil Statutes), are amended to read as
5 follows:

6 (f) The application must be made on a form prescribed by the
7 commissioner and must specify the class of license and each
8 endorsement the applicant seeks. The application must be verified
9 and must be accompanied by:

10 (1) ~~[evidence-of-the-insurance-coverage-required-under~~
11 ~~this-Act;~~

12 ~~[+2]~~ a statement of the applicant's practical
13 experience; and

14 (2) ~~[+3]~~ the examination fee.

15 (g) The executive director ~~[commissioner]~~ shall issue an air
16 conditioning and refrigeration contractor license to an applicant
17 who possesses the required qualifications, passes the appropriate
18 examinations, furnishes evidence of the insurance coverage required
19 under this Act, and pays the ~~[examination--fee--and--the]~~ original
20 license fee required by this Act. An applicant who fails an
21 examination is eligible for reexamination.

22 SECTION 7. Section 5, Air Conditioning and Refrigeration
23 Contractor License Law (Article 8861, Vernon's Texas Civil
24 Statutes), is amended to read as follows:

25 (a) A violation of this Act or a rule adopted under this Act
26 is a ground for the denial, suspension, or revocation of a license
27 issued under this Act. The failure to provide proper installation,

1 service, or [and] mechanical integrity under this Act constitutes a
2 violation of this Act. An intentional or knowing misrepresentation
3 of necessary services, services to be provided, or services that
4 have been provided, or a fraudulent promise made to influence,
5 persuade, or induce an individual to contract for services
6 constitutes a violation of this Act and a ground for the suspension
7 or revocation of a license issued under this Act.

8 SECTION 8. Section 6, Subsection (a)(6), Air Conditioning
9 and Refrigeration Contractor License Law (Article 8861, Vernon's
10 Texas Civil Statutes), is amended to read as follows:

11 (6) performs air conditioning and refrigeration
12 contracting on:

13 (A) a portable or self-contained ductless air
14 conditioning [~~or-refrigeration~~] product that has a cooling capacity
15 of three tons or less;

16 (B) a portable or self-contained heating product
17 that does not require the forced movement of air outside the
18 heating unit; or

19 (C) environmental air conditioning equipment
20 that is intended for temporary use and is not fixed in place; or

21 (D) residential refrigerators, freezers, and ice
22 machines;

23 SECTION 9. Section 7, Air Conditioning and Refrigeration
24 Contractor License Law (Article 8861, Vernon's Texas Civil
25 Statutes), is amended to read as follows:

26 Sec. 7. REPORTING REQUIREMENT. (a) Each person licensed
27 under this Act shall notify the municipal authority who has control

1 of the enforcement of regulations relative to air conditioning and
2 refrigeration contracting in the municipality in which the person
3 is engaged in air conditioning and refrigeration contracting that
4 the person has obtained a state license.

5 (b) The notification must be in the form required by the
6 municipality.

7 (c) The amount of a fee imposed by a municipality on a
8 contractor to provide notice under this section may be set by the
9 municipality only in an amount reasonable and necessary to
10 implement this section.

11 SECTION 10. Section 8, Air Conditioning and Refrigeration
12 Contractor License Law (Article 8861, Vernon's Texas Civil
13 Statutes), is amended to read as follows:

14 Sec. 8. PENALTY. Except as provided in Section 9, a person
15 commits an offense if the person knowingly or intentionally engages
16 in air conditioning and refrigeration contracting without a license
17 issued under this Act. An offense under this section is a Class C
18 [B] misdemeanor.

19 SECTION 11. Section 9, Air Conditioning and Refrigeration
20 Contractor License Law (Article 8861, Vernon's Texas Civil
21 Statutes), is amended to read as follows:

22 Sec. 9. MUNICIPAL REGULATION. (a) A license issued by a
23 municipality of this state that complies with the requirements of
24 this section is valid under the terms of the license within that
25 municipality. However, a license issued [~~under this Act~~] by the
26 Department is valid throughout the state, and the holder and people
27 under supervision are not required to hold a municipal license to

1 practice air conditioning and refrigeration contracting in any
2 municipality within this state.

3 (b) An applicant for a municipal license must:

4 (1) pass an examination that covers the same subjects
5 as the examination required by the commissioner for an air
6 conditioning and refrigeration contractor license of the class of
7 work that the municipal applicant proposes to perform; and

8 (2) meet experience requirements that are at least as
9 strict as those required under Section 4(e) of this Act for an air
10 conditioning and refrigeration contractor license.

11 (c) A municipality may by ordinance adopt and enforce
12 standards for air conditioning and refrigeration contractors that
13 are consistent with the standards established under this Act. The
14 municipality shall report violations of the ordinance to the
15 commissioner not later than the 10th day after the date on which
16 the municipality takes action to enforce the ordinance. Conviction
17 of an offense under the municipal ordinance is a ground for the
18 denial, suspension, or revocation of a license issued under this
19 Act.

20 SECTION 12. Subsection (c), Section 23, The Real Estate
21 License Act (Article 6573a, Vernon's Texas Civil Statutes), is
22 amended by adding Subdivision (4) to read as follows:

23 (4) In addition to the license requirements imposed
24 under Subdivisions (1), (2), and (3) of this subsection, a business
25 entity that inspects an environmental air conditioning system,
26 commercial refrigeration system, or process cooling or heating
27 system as part of a real estate inspection conducted under this Act

1 must employ a person who holds the appropriate air conditioning
2 and refrigeration contractor licenses and endorsements under the
3 Air Conditioning and Refrigeration Contractor License Law (Article
4 8861, Vernon's Texas Civil Statutes), or an appropriate municipal
5 license. An employee who does not hold a license may perform the
6 inspection under the direction of a licensee licensed under this
7 Act. For purposes of this Act, "inspection" of environmental air
8 conditioning, commercial refrigeration, and process cooling and
9 heating equipment means an inspection that includes the use of
10 electronic instruments, gauges, thermometers, mechanical
11 instruments, or other meters that require direct in-line connection
12 to the refrigeration system.

13 SECTION 13. (a) The change in law made to Section 8, Air
14 Conditioning and Refrigeration Contractor License Law (Article
15 8861, Vernon's Texas Civil Statutes), by this Act applies only to
16 an offense committed on or after the effective date of this Act.
17 For purposes of this section, an offense is committed before the
18 effective date of this Act if any element of the offense occurs
19 before that date.

20 (b) An offense committed before the effective date of this
21 Act is governed by the law in effect when the offense was
22 committed, and the former law is continued in effect for that
23 purpose.

24 SECTION 14. (a) Except as provided by Subsection (b) of
25 this section, the change in law made to Section 9, Air Conditioning
26 and Refrigeration Contractor License Law (Article 8861, Vernon's
27 Texas Civil Statutes), by this Act applies to a municipal license

1 that is issued or renewed on or after the effective date of this
2 Act. A municipality subject to that section shall adopt
3 examination requirements in compliance with that section not later
4 than January 1, 2000.

5 (b) To continue to engage in the practice of air
6 conditioning and refrigeration contracting after September 1, 1999,
7 a person who holds a municipal license on the effective date of
8 this Act must satisfy the examination requirements imposed under
9 Subsection (b), Section 9, Air Conditioning and Refrigeration
10 Contractor License Law (Article 8861, Vernon's Texas Civil
11 Statutes), as amended by this Act, not later than June 1, 2000.

12 SECTION 15. Subsection 10(h), Air Conditioning and
13 Refrigeration Contractor License Law (Article 8861, Vernon's Texas
14 Civil Statutes), is amended to read as follows:

15 (h) A person commits an offense if the person purchases a
16 refrigerant or equipment containing a refrigerant in this state in
17 violation of Subsection (c), (e), or (f) of this section. An
18 offense under this subsection is a Class C [B] misdemeanor.

19 SECTION 16. Section 10, Air Conditioning and Refrigeration
20 Contractor License Law (Article 8861, Vernon's Texas Civil
21 Statutes), is amended by adding Subsection (j), to read as follows:

22 (j) This Section does not apply to persons exempt under
23 Section 6(a)(3), (5), or (7) of this Act.

24 SECTION 17. (a) This Act takes effect September 1, 1999.

25 (b) Not later than December 31, 1999, the commissioner of
26 licensing and regulation shall adopt rules as required by Section
27 3C, Air Conditioning and Refrigeration Contractor License Law

1 (Article 8861, Vernon's Texas Civil Statutes), as added by this
2 Act.

3 (c) Subsection (c), Section 23, The Real Estate License Act
4 (Article 6573a, Vernon's Texas Civil Statutes), as amended by this
5 Act, applies only to a real estate inspection that is conducted on
6 or after the effective date of this Act. A real estate inspection
7 conducted before that date is governed by the law in effect on the
8 date that the inspection occurs, and the former law is continued in
9 effect for that purpose.

10 SECTION 18. The importance of this legislation and the
11 crowded condition of the calendars in both houses create an
12 emergency and an imperative public necessity that the
13 constitutional rule requiring bills to be read on three several
14 days in each house be suspended, and this rule is hereby suspended.

By Yarbrough

ENGROSSED
SECOND READING
H.B. No. 1822

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of air conditioning and refrigeration contractors; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 2(7) and (9), Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), are amended to read as follows:

(7) "Air conditioning and refrigeration maintenance work" means repair work and all other work required for the continued normal performance of an environmental air conditioning system, commercial refrigeration system or equipment, or process cooling or heating system. The term does not include the installation of a total replacement of the system or the installation or repair of boilers or pressure vessels that must be installed ~~[by-licensed-persons]~~ pursuant to rules and regulations adopted by the commissioner under Chapter 755, Health and Safety Code.

(9) "Air conditioning and refrigeration contracting" means to perform or offer to perform the design, installation, construction, maintenance, service, repair, alteration, or modification of a product or of equipment in environmental air conditioning, commercial refrigeration, or process cooling or heating systems.

SECTION 2. Section 2, Air Conditioning and Refrigeration

1 Contractor License Law (Article 8861, Vernon's Texas Civil
2 Statutes), is amended by adding Subdivision (14) to read as
3 follows:

4 (14) "Air conditioning and refrigeration contracting
5 company" means any person, sole proprietorship, corporation,
6 partnership, association, or other business entity that performs or
7 offers to perform air conditioning and refrigeration contracting to
8 the general public.

9 SECTION 3. Sections 3(b) and (m), Air Conditioning and
10 Refrigeration Contractor License Law (Article 8861, Vernon's Texas
11 Civil Statutes), are amended to read as follows:

12 (b) The executive director [~~commissioner~~] may issue an
13 emergency order as necessary to enforce this Act if the executive
14 director [~~commissioner~~] determines that an emergency exists
15 requiring immediate action to protect the public health and safety.
16 The order may be issued without notice and hearing or with any
17 notice and hearing that the executive director [~~commissioner~~]
18 considers practicable under the circumstances. If an emergency
19 order is issued under this subsection without a hearing, the
20 executive director [~~commissioner~~] shall set the time and place for
21 a hearing to affirm, modify, or set aside the emergency order. The
22 executive director may issue cease and desist orders.

23 (m) A representative of the department [~~commission~~] or a
24 municipal air conditioning or refrigeration inspector within the
25 jurisdiction of the municipality may issue a citation to a person
26 who violates Section 10(e) or (f) of this Act.

27 SECTION 4. Section 3B, Air Conditioning and Refrigeration

1 Contractor License Law (Article 8861, Vernon's Texas Civil
2 Statutes), is amended to read as follows:

3 Sec. 3B. LICENSE REQUIRED; CITATION. (a) Unless the person
4 is exempted under Section 6 of this Act, a person may not perform
5 air conditioning and refrigeration contracting without a license
6 under this Act.

7 (b) An air conditioning and refrigeration contracting
8 company must employ full time in each permanent office a license
9 holder whose license is assigned to that company.

10 (c) A municipal or county official may issue a citation to
11 an air conditioning and refrigeration contracting company that
12 performs air conditioning and refrigeration contracting without a
13 license issued under this Act, if the person is not exempt from the
14 provisions of this Act.

15 SECTION 5. The Air Conditioning and Refrigeration Contractor
16 License Law (Article 8861, Vernon's Texas Civil Statutes) is
17 amended by adding Section 3C to read as follows:

18 Sec. 3C. ENFORCEMENT OF CONTRACTS. An air conditioning and
19 refrigeration contracting company that performs air conditioning
20 and refrigeration contracting without employing a licensee with the
21 appropriate license under this Act may not collect a fee or
22 otherwise enforce a contract for the services performed. To
23 enforce a contract for the performance of air conditioning and
24 refrigeration contracting, the air conditioning and refrigeration
25 contracting company that performs the services must have been
26 licensed at the time the contract is signed and at the time the
27 work is performed.

1 SECTION 6. Sections 4(f) and (g), Air Conditioning and
2 Refrigeration Contractor License Law (Article 8861, Vernon's Texas
3 Civil Statutes), are amended to read as follows:

4 (f) The application must be made on a form prescribed by the
5 commissioner and must specify the class of license and each
6 endorsement the applicant seeks. The application must be verified
7 and must be accompanied by:

8 (1) ~~[evidence-of-the-insurance-coverage-required-under~~
9 ~~this-Act;~~

10 [+2+] a statement of the applicant's practical
11 experience; and

12 (2) [+3+] the examination fee.

13 (g) The executive director ~~[commissioner]~~ shall issue an air
14 conditioning and refrigeration contractor license to an applicant
15 who possesses the required qualifications, passes the appropriate
16 examinations, furnishes evidence of the insurance coverage required
17 under this Act, and pays the ~~[examination--fee--and--the]~~ original
18 license fee required by this Act. An applicant who fails an
19 examination is eligible for reexamination.

20 SECTION 7. Section 5(a), Air Conditioning and Refrigeration
21 Contractor License Law (Article 8861, Vernon's Texas Civil
22 Statutes), is amended to read as follows:

23 (a) A violation of this Act or a rule adopted under this Act
24 is a ground for the denial, suspension, or revocation of a license
25 issued under this Act. The failure to provide proper installation,
26 service, or ~~[and]~~ mechanical integrity under this Act constitutes a
27 violation of this Act. An intentional or knowing misrepresentation

1 of necessary services, services to be provided, or services that
2 have been provided, or a fraudulent promise made to influence,
3 persuade, or induce an individual to contract for services
4 constitutes a violation of this Act and a ground for the suspension
5 or revocation of a license issued under this Act.

6 SECTION 8. Section 6(a), Air Conditioning and Refrigeration
7 Contractor License Law (Article 8861, Vernon's Texas Civil
8 Statutes), is amended to read as follows:

9 (a) This Act does not apply to a person who:

10 (1) performs air conditioning and refrigeration
11 contracting in a building owned solely by him as his home;

12 (2) performs air conditioning or refrigeration
13 maintenance work if (i) the person is a maintenance man or
14 maintenance engineer who is a regular bona fide employee of the
15 property owner, the property lessee, or the management company
16 managing the property where the maintenance work is being
17 performed, (ii) the work is performed in connection with the
18 business in which the person is employed, and (iii) the person and
19 the person's employer referred to in (i) above do not engage in the
20 occupation of air conditioning and refrigeration contracting for
21 the general public;

22 (3) performs air conditioning and refrigeration
23 contracting and is regularly employed by a regulated electric or
24 gas utility;

25 (4) is licensed as a professional engineer under The
26 Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil
27 Statutes), performs work in connection with the business in which

1 the person is employed, and does not engage in the practice of air
2 conditioning and refrigeration contracting for the general public;

3 (5) performs process cooling or heating work for an
4 industrial operation such as a chemical plant, petrochemical plant,
5 refinery, natural gas plant, or natural gas treating plant when
6 employed by that operation;

7 (6) performs air conditioning and refrigeration
8 contracting on:

9 (A) a portable or self-contained ductless air
10 conditioning [~~or-refrigeration~~] product that has a cooling capacity
11 of three tons or less;

12 (B) a portable or self-contained heating product
13 that does not require the forced movement of air outside the
14 heating unit; [~~or~~]

15 (C) environmental air conditioning equipment
16 that is intended for temporary use and is not fixed in place; or

17 (D) residential refrigerators, freezers, and ice
18 machines; or

19 (7) performs air conditioning services only on a motor
20 vehicle air conditioning unit or who employs a person who performs
21 air conditioning services only on a motor vehicle air conditioning
22 unit.

23 SECTION 9. Section 7, Air Conditioning and Refrigeration
24 Contractor License Law (Article 8861, Vernon's Texas Civil
25 Statutes), is amended to read as follows:

26 Sec. 7. REPORTING REQUIREMENT. (a) Each person licensed
27 under this Act shall notify the municipal authority who has control

1 of the enforcement of regulations relative to air conditioning and
2 refrigeration contracting in the municipality in which the person
3 is engaged in air conditioning and refrigeration contracting that
4 the person has obtained a state license.

5 (b) The notification must be in the form required by the
6 municipality.

7 (c) The amount of a fee imposed by a municipality on a
8 contractor to provide notice under this section may be set by the
9 municipality only in an amount reasonable and necessary to
10 implement this section.

11 SECTION 10. Section 8, Air Conditioning and Refrigeration
12 Contractor License Law (Article 8861, Vernon's Texas Civil
13 Statutes), is amended to read as follows:

14 Sec. 8. PENALTY. Except as provided in Section 9, a person
15 commits an offense if the person knowingly or intentionally engages
16 in air conditioning and refrigeration contracting without a license
17 issued under this Act. An offense under this section is a Class C
18 [B] misdemeanor.

19 SECTION 11. Section 9, Air Conditioning and Refrigeration
20 Contractor License Law (Article 8861, Vernon's Texas Civil
21 Statutes), is amended to read as follows:

22 Sec. 9. MUNICIPAL REGULATION. (a) A license issued by a
23 municipality of this state that complies with the requirements of
24 this section is valid under the terms of the license within that
25 municipality. However, a license issued [~~under this Act~~] by the
26 department is valid throughout the state, and the holder and people
27 under supervision are not required to hold a municipal license to

1 practice air conditioning and refrigeration contracting in any
2 municipality within this state.

3 (b) An applicant for a municipal license must:

4 (1) pass an examination that covers the same subjects
5 as the examination required by the commissioner for an air
6 conditioning and refrigeration contractor license of the class of
7 work that the municipal applicant proposes to perform; and

8 (2) meet experience requirements that are at least as
9 strict as those required under Section 4(e) of this Act for an air
10 conditioning and refrigeration contractor license.

11 (c) A municipality may by ordinance adopt and enforce
12 standards for air conditioning and refrigeration contractors that
13 are consistent with the standards established under this Act. The
14 municipality shall report violations of the ordinance to the
15 commissioner not later than the 10th day after the date on which
16 the municipality takes action to enforce the ordinance. Conviction
17 of an offense under the municipal ordinance is a ground for the
18 denial, suspension, or revocation of a license issued under this
19 Act.

20 SECTION 12. Section 10(h), Air Conditioning and
21 Refrigeration Contractor License Law (Article 8861, Vernon's Texas
22 Civil Statutes), is amended to read as follows:

23 (h) A person commits an offense if the person purchases a
24 refrigerant or equipment containing a refrigerant in this state in
25 violation of Subsection (c), (e), or (f) of this section. An
26 offense under this subsection is a Class C [B] misdemeanor.

27 SECTION 13. Section 10, Air Conditioning and Refrigeration

1 Contractor License Law (Article 8861, Vernon's Texas Civil
2 Statutes), is amended by adding Subsection (j), to read as follows:

3 (j) This section does not apply to persons exempt under
4 Section 6(a)(3), (5), or (7) of this Act.

5 SECTION 14. Section 23(c), The Real Estate License Act
6 (Article 6573a, Vernon's Texas Civil Statutes), is amended by
7 adding Subdivision (4) to read as follows:

8 (4) In addition to the license requirements imposed
9 under Subdivisions (1), (2), and (3) of this subsection, a business
10 entity that inspects an environmental air conditioning system,
11 commercial refrigeration system, or process cooling or heating
12 system as part of a real estate inspection conducted under this Act
13 must employ a person who holds the appropriate air conditioning
14 and refrigeration contractor licenses and endorsements under the
15 Air Conditioning and Refrigeration Contractor License Law (Article
16 8861, Vernon's Texas Civil Statutes), or an appropriate municipal
17 license. An employee who does not hold a license may perform the
18 inspection under the direction of a licensee licensed under this
19 Act. For purposes of this Act, "inspection" of environmental air
20 conditioning, commercial refrigeration, and process cooling and
21 heating equipment means an inspection that includes the use of
22 electronic instruments, gauges, thermometers, mechanical
23 instruments, or other meters that require direct in-line connection
24 to the refrigeration system.

25 SECTION 15. (a) The change in law made to Section 8, Air
26 Conditioning and Refrigeration Contractor License Law (Article
27 8861, Vernon's Texas Civil Statutes), by this Act applies only to

1 an offense committed on or after the effective date of this Act.
2 For purposes of this section, an offense is committed before the
3 effective date of this Act if any element of the offense occurs
4 before that date.

5 (b) An offense committed before the effective date of this
6 Act is governed by the law in effect when the offense was
7 committed, and the former law is continued in effect for that
8 purpose.

9 SECTION 16. (a) Except as provided by Subsection (b) of
10 this section, the change in law made to Section 9, Air Conditioning
11 and Refrigeration Contractor License Law (Article 8861, Vernon's
12 Texas Civil Statutes), by this Act applies to a municipal license
13 that is issued or renewed on or after the effective date of this
14 Act. A municipality subject to that section shall adopt
15 examination requirements in compliance with that section not later
16 than January 1, 2000.

17 (b) To continue to engage in the practice of air
18 conditioning and refrigeration contracting after September 1, 1999,
19 a person who holds a municipal license on the effective date of
20 this Act must satisfy the examination requirements imposed under
21 Section 9(b), Air Conditioning and Refrigeration Contractor License
22 Law (Article 8861, Vernon's Texas Civil Statutes), as amended by
23 this Act, not later than June 1, 2000.

24 SECTION 17. (a) This Act takes effect September 1, 1999.

25 (b) Not later than December 31, 1999, the commissioner of
26 licensing and regulation shall adopt rules as required by Section
27 3C, Air Conditioning and Refrigeration Contractor License Law

1 (Article 8861, Vernon's Texas Civil Statutes), as added by this
2 Act.

3 (c) Section 23(c), The Real Estate License Act (Article
4 6573a, Vernon's Texas Civil Statutes), as amended by this Act,
5 applies only to a real estate inspection that is conducted on or
6 after the effective date of this Act. A real estate inspection
7 conducted before that date is governed by the law in effect on the
8 date that the inspection occurs, and the former law is continued in
9 effect for that purpose.

10 SECTION 18. The importance of this legislation and the
11 crowded condition of the calendars in both houses create an
12 emergency and an imperative public necessity that the
13 constitutional rule requiring bills to be read on three several
14 days in each house be suspended, and this rule is hereby suspended.

HOUSE ENGROSSMENT

By Yarbrough

H.B. No. 1822

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of air conditioning and refrigeration contractors; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 2(7) and (9), Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), are amended to read as follows:

(7) "Air conditioning and refrigeration maintenance work" means repair work and all other work required for the continued normal performance of an environmental air conditioning system, commercial refrigeration system or equipment, or process cooling or heating system. The term does not include the installation of a total replacement of the system or the installation or repair of boilers or pressure vessels that must be installed ~~[by-licensed-persons]~~ pursuant to rules and regulations adopted by the commissioner under Chapter 755, Health and Safety Code.

(9) "Air conditioning and refrigeration contracting" means to perform or offer to perform the design, installation, construction, maintenance, service, repair, alteration, or modification of a product or of equipment in environmental air conditioning, commercial refrigeration, or process cooling or heating systems.

SECTION 2. Section 2, Air Conditioning and Refrigeration

Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), is amended by adding Subdivision (14) to read as follows:

(14) "Air conditioning and refrigeration contracting company" means any person, sole proprietorship, corporation, partnership, association, or other business entity that performs or offers to perform air conditioning and refrigeration contracting to the general public.

SECTION 3. Sections 3(b) and (m), Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) The executive director [~~commissioner~~] may issue an emergency order as necessary to enforce this Act if the executive director [~~commissioner~~] determines that an emergency exists requiring immediate action to protect the public health and safety. The order may be issued without notice and hearing or with any notice and hearing that the executive director [~~commissioner~~] considers practicable under the circumstances. If an emergency order is issued under this subsection without a hearing, the executive director [~~commissioner~~] shall set the time and place for a hearing to affirm, modify, or set aside the emergency order. The executive director may issue cease and desist orders.

(m) A representative of the department [~~commission~~] or a municipal air conditioning or refrigeration inspector within the jurisdiction of the municipality may issue a citation to a person who violates Section 10(e) or (f) of this Act.

SECTION 4. Section 3B, Air Conditioning and Refrigeration

1 Contractor License Law (Article 8861, Vernon's Texas Civil
2 Statutes), is amended to read as follows:

3 Sec. 3B. LICENSE REQUIRED; CITATION. (a) Unless the person
4 is exempted under Section 6 of this Act, a person may not perform
5 air conditioning and refrigeration contracting without a license
6 under this Act.

7 (b) An air conditioning and refrigeration contracting
8 company must employ full time in each permanent office a license
9 holder whose license is assigned to that company.

10 (c) A municipal or county official may issue a citation to
11 an air conditioning and refrigeration contracting company that
12 performs air conditioning and refrigeration contracting without a
13 license issued under this Act, if the person is not exempt from the
14 provisions of this Act.

15 SECTION 5. The Air Conditioning and Refrigeration Contractor
16 License Law (Article 8861, Vernon's Texas Civil Statutes) is
17 amended by adding Section 3C to read as follows:

18 Sec. 3C. ENFORCEMENT OF CONTRACTS. An air conditioning and
19 refrigeration contracting company that performs air conditioning
20 and refrigeration contracting without employing a licensee with the
21 appropriate license under this Act may not collect a fee or
22 otherwise enforce a contract for the services performed. To
23 enforce a contract for the performance of air conditioning and
24 refrigeration contracting, the air conditioning and refrigeration
25 contracting company that performs the services must have been
26 licensed at the time the contract is signed and at the time the
27 work is performed.

1 SECTION 6. Sections 4(f) and (g), Air Conditioning and
2 Refrigeration Contractor License Law (Article 8861, Vernon's Texas
3 Civil Statutes), are amended to read as follows:

4 (f) The application must be made on a form prescribed by the
5 commissioner and must specify the class of license and each
6 endorsement the applicant seeks. The application must be verified
7 and must be accompanied by:

8 (1) ~~[evidence-of-the-insurance-coverage-required-under~~
9 ~~this-Act,~~

10 [+2+] a statement of the applicant's practical
11 experience; and

12 (2) (2) [+3+] the examination fee.

13 (g) The executive director ~~[commissioner]~~ shall issue an air
14 conditioning and refrigeration contractor license to an applicant
15 who possesses the required qualifications, passes the appropriate
16 examinations, furnishes evidence of the insurance coverage required
17 under this Act, and pays the ~~[examination--fee--and--the]~~ original
18 license fee required by this Act. An applicant who fails an
19 examination is eligible for reexamination.

20 SECTION 7. Section 5(a), Air Conditioning and Refrigeration
21 Contractor License Law (Article 8861, Vernon's Texas Civil
22 Statutes), is amended to read as follows:

23 (a) A violation of this Act or a rule adopted under this Act
24 is a ground for the denial, suspension, or revocation of a license
25 issued under this Act. The failure to provide proper installation,
26 service, or ~~[and]~~ mechanical integrity under this Act constitutes a
27 violation of this Act. An intentional or knowing misrepresentation

1 of necessary services, services to be provided, or services that
2 have been provided, or a fraudulent promise made to influence,
3 persuade, or induce an individual to contract for services
4 constitutes a violation of this Act and a ground for the suspension
5 or revocation of a license issued under this Act.

6 SECTION 8. Section 6(a), Air Conditioning and Refrigeration
7 Contractor License Law (Article 8861, Vernon's Texas Civil
8 Statutes), is amended to read as follows:

9 (a) This Act does not apply to a person who:

10 (1) performs air conditioning and refrigeration
11 contracting in a building owned solely by him as his home;

12 (2) performs air conditioning or refrigeration
13 maintenance work if (i) the person is a maintenance man or
14 maintenance engineer who is a regular bona fide employee of the
15 property owner, the property lessee, or the management company
16 managing the property where the maintenance work is being
17 performed, (ii) the work is performed in connection with the
18 business in which the person is employed, and (iii) the person and
19 the person's employer referred to in (i) above do not engage in the
20 occupation of air conditioning and refrigeration contracting for
21 the general public;

22 (3) performs air conditioning and refrigeration
23 contracting and is regularly employed by a regulated electric or
24 gas utility;

25 (4) is licensed as a professional engineer under The
26 Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil
27 Statutes), performs work in connection with the business in which

1 the person is employed, and does not engage in the practice of air
2 conditioning and refrigeration contracting for the general public;

3 (5) performs process cooling or heating work for an
4 industrial operation such as a chemical plant, petrochemical plant,
5 refinery, natural gas plant, or natural gas treating plant when
6 employed by that operation;

7 (6) performs air conditioning and refrigeration
8 contracting on:

9 (A) a portable or self-contained ductless air
10 conditioning [~~or-refrigeration~~] product that has a cooling capacity
11 of three tons or less;

12 (B) a portable or self-contained heating product
13 that does not require the forced movement of air outside the
14 heating unit; [~~or~~]

15 (C) environmental air conditioning equipment
16 that is intended for temporary use and is not fixed in place; or

17 (D) residential refrigerators, freezers, and ice
18 machines; or

19 (7) performs air conditioning services only on a motor
20 vehicle air conditioning unit or who employs a person who performs
21 air conditioning services only on a motor vehicle air conditioning
22 unit.

23 SECTION 9. Section 7, Air Conditioning and Refrigeration
24 Contractor License Law (Article 8861, Vernon's Texas Civil
25 Statutes), is amended to read as follows:

26 Sec. 7. REPORTING REQUIREMENT. (a) Each person licensed
27 under this Act shall notify the municipal authority who has control

1 of the enforcement of regulations relative to air conditioning and
2 refrigeration contracting in the municipality in which the person
3 is engaged in air conditioning and refrigeration contracting that
4 the person has obtained a state license.

5 (b) The notification must be in the form required by the
6 municipality.

7 (c) The amount of a fee imposed by a municipality on a
8 contractor to provide notice under this section may be set by the
9 municipality only in an amount reasonable and necessary to
10 implement this section.

11 SECTION 10. Section 8, Air Conditioning and Refrigeration
12 Contractor License Law (Article 8861, Vernon's Texas Civil
13 Statutes), is amended to read as follows:

14 Sec. 8. PENALTY. Except as provided in Section 9, a person
15 commits an offense if the person knowingly or intentionally engages
16 in air conditioning and refrigeration contracting without a license
17 issued under this Act. An offense under this section is a Class C
18 [B] misdemeanor.

19 SECTION 11. Section 9, Air Conditioning and Refrigeration
20 Contractor License Law (Article 8861, Vernon's Texas Civil
21 Statutes), is amended to read as follows:

22 Sec. 9. MUNICIPAL REGULATION. (a) A license issued by a
23 municipality of this state that complies with the requirements of
24 this section is valid under the terms of the license within that
25 municipality. However, a license issued [~~under this Act~~] by the
26 department is valid throughout the state, and the holder and people
27 under supervision are not required to hold a municipal license to

1 practice air conditioning and refrigeration contracting in any
2 municipality within this state.

3 (b) An applicant for a municipal license must:

4 (1) pass an examination that covers the same subjects
5 as the examination required by the commissioner for an air
6 conditioning and refrigeration contractor license of the class of
7 work that the municipal applicant proposes to perform; and

8 (2) meet experience requirements that are at least as
9 strict as those required under Section 4(e) of this Act for an air
10 conditioning and refrigeration contractor license.

11 (c) A municipality may by ordinance adopt and enforce
12 standards for air conditioning and refrigeration contractors that
13 are consistent with the standards established under this Act. The
14 municipality shall report violations of the ordinance to the
15 commissioner not later than the 10th day after the date on which
16 the municipality takes action to enforce the ordinance. Conviction
17 of an offense under the municipal ordinance is a ground for the
18 denial, suspension, or revocation of a license issued under this
19 Act.

20 SECTION 12. Section 10(h), Air Conditioning and
21 Refrigeration Contractor License Law (Article 8861, Vernon's Texas
22 Civil Statutes), is amended to read as follows:

23 (h) A person commits an offense if the person purchases a
24 refrigerant or equipment containing a refrigerant in this state in
25 violation of Subsection (c), (e), or (f) of this section. An
26 offense under this subsection is a Class C [B] misdemeanor.

27 SECTION 13. Section 10, Air Conditioning and Refrigeration

1 Contractor License Law (Article 8861, Vernon's Texas Civil
2 Statutes), is amended by adding Subsection (j), to read as follows:

3 (j) This section does not apply to persons exempt under
4 Section 6(a)(3), (5), or (7) of this Act.

5 SECTION 14. Section 23(c), The Real Estate License Act
6 (Article 6573a, Vernon's Texas Civil Statutes), is amended by
7 adding Subdivision (4) to read as follows:

8 (4) In addition to the license requirements imposed
9 under Subdivisions (1), (2), and (3) of this subsection, a business
10 entity that inspects an environmental air conditioning system,
11 commercial refrigeration system, or process cooling or heating
12 system as part of a real estate inspection conducted under this Act
13 must employ a person who holds the appropriate air conditioning
14 and refrigeration contractor licenses and endorsements under the
15 Air Conditioning and Refrigeration Contractor License Law (Article
16 8861, Vernon's Texas Civil Statutes), or an appropriate municipal
17 license. An employee who does not hold a license may perform the
18 inspection under the direction of a licensee licensed under this
19 Act. For purposes of this Act, "inspection" of environmental air
20 conditioning, commercial refrigeration, and process cooling and
21 heating equipment means an inspection that includes the use of
22 electronic instruments, gauges, thermometers, mechanical
23 instruments, or other meters that require direct in-line connection
24 to the refrigeration system.

25 SECTION 15. (a) The change in law made to Section 8, Air
26 Conditioning and Refrigeration Contractor License Law (Article
27 8861, Vernon's Texas Civil Statutes), by this Act applies only to

1 an offense committed on or after the effective date of this Act.
2 For purposes of this section, an offense is committed before the
3 effective date of this Act if any element of the offense occurs
4 before that date.

5 (b) An offense committed before the effective date of this
6 Act is governed by the law in effect when the offense was
7 committed, and the former law is continued in effect for that
8 purpose.

9 SECTION 16. (a) Except as provided by Subsection (b) of
10 this section, the change in law made to Section 9, Air Conditioning
11 and Refrigeration Contractor License Law (Article 8861, Vernon's
12 Texas Civil Statutes), by this Act applies to a municipal license
13 that is issued or renewed on or after the effective date of this
14 Act. A municipality subject to that section shall adopt
15 examination requirements in compliance with that section not later
16 than January 1, 2000.

17 (b) To continue to engage in the practice of air
18 conditioning and refrigeration contracting after September 1, 1999,
19 a person who holds a municipal license on the effective date of
20 this Act must satisfy the examination requirements imposed under
21 Section 9(b), Air Conditioning and Refrigeration Contractor License
22 Law (Article 8861, Vernon's Texas Civil Statutes), as amended by
23 this Act, not later than June 1, 2000.

24 SECTION 17. (a) This Act takes effect September 1, 1999.

25 (b) Not later than December 31, 1999, the commissioner of
26 licensing and regulation shall adopt rules as required by Section
27 3C, Air Conditioning and Refrigeration Contractor License Law

1 (Article 8861, Vernon's Texas Civil Statutes), as added by this
2 Act.

3 (c) Section 23(c), The Real Estate License Act (Article
4 6573a, Vernon's Texas Civil Statutes), as amended by this Act,
5 applies only to a real estate inspection that is conducted on or
6 after the effective date of this Act. A real estate inspection
7 conducted before that date is governed by the law in effect on the
8 date that the inspection occurs, and the former law is continued in
9 effect for that purpose.

10 SECTION 18. The importance of this legislation and the
11 crowded condition of the calendars in both houses create an
12 emergency and an imperative public necessity that the
13 constitutional rule requiring bills to be read on three several
14 days in each house be suspended, and this rule is hereby suspended.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 76th Regular Session

March 21, 1999

TO: Honorable Ron Wilson, Chair, House Committee on Licensing & Administrative Procedures

FROM: John Keel, Director, Legislative Budget Board

IN RE: **HB1822** by Yarbrough (relating to the regulation of air conditioning and refrigeration contractors; providing penalties), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: JK, TH, CB

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 76th Regular Session

March 12, 1999

TO: Honorable Ron Wilson, Chair, House Committee on Licensing & Administrative Procedures

FROM: John Keel, Director, Legislative Budget Board

IN RE: **HB1822** by Yarbrough (Relating to the regulation of air conditioning and refrigeration contractors; providing penalties), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 452 Department of Licensing and Regulation
LBB Staff: JK, TH, CB

1-1 By: Yarbrough (Senate Sponsor - Carona) H.B. No. 1822
1-2 (In the Senate - Received from the House May 10, 1999;
1-3 May 10, 1999, read first time and referred to Committee on Economic
1-4 Development; May 14, 1999, reported favorably by the following
1-5 vote: Yeas 7, Nays 0; May 14, 1999, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the regulation of air conditioning and refrigeration
1-9 contractors; providing penalties.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Sections 2(7) and (9), Air Conditioning and
1-12 Refrigeration Contractor License Law (Article 8861, Vernon's Texas
1-13 Civil Statutes), are amended to read as follows:

1-14 (7) "Air conditioning and refrigeration maintenance
1-15 work" means repair work and all other work required for the
1-16 continued normal performance of an environmental air conditioning
1-17 system, commercial refrigeration system or equipment, or process
1-18 cooling or heating system. The term does not include the
1-19 installation of a total replacement of the system or the
1-20 installation or repair of boilers or pressure vessels that must be
1-21 installed ~~[by-licensed-persons]~~ pursuant to rules and regulations
1-22 adopted by the commissioner under Chapter 755, Health and Safety
1-23 Code.

1-24 (9) "Air conditioning and refrigeration contracting"
1-25 means to perform or offer to perform the design, installation,
1-26 construction, maintenance, service, repair, alteration, or
1-27 modification of a product or of equipment in environmental air
1-28 conditioning, commercial refrigeration, or process cooling or
1-29 heating systems.

1-30 SECTION 2. Section 2, Air Conditioning and Refrigeration
1-31 Contractor License Law (Article 8861, Vernon's Texas Civil
1-32 Statutes), is amended by adding Subdivision (14) to read as
1-33 follows:

1-34 (14) "Air conditioning and refrigeration contracting
1-35 company" means any person, sole proprietorship, corporation,
1-36 partnership, association, or other business entity that performs or
1-37 offers to perform air conditioning and refrigeration contracting to
1-38 the general public.

1-39 SECTION 3. Sections 3(b) and (m), Air Conditioning and
1-40 Refrigeration Contractor License Law (Article 8861, Vernon's Texas
1-41 Civil Statutes), are amended to read as follows:

1-42 (b) The executive director ~~[commissioner]~~ may issue an
1-43 emergency order as necessary to enforce this Act if the executive
1-44 director ~~[commissioner]~~ determines that an emergency exists
1-45 requiring immediate action to protect the public health and safety.
1-46 The order may be issued without notice and hearing or with any
1-47 notice and hearing that the executive director ~~[commissioner]~~
1-48 considers practicable under the circumstances. If an emergency
1-49 order is issued under this subsection without a hearing, the
1-50 executive director ~~[commissioner]~~ shall set the time and place for
1-51 a hearing to affirm, modify, or set aside the emergency order. The
1-52 executive director may issue cease and desist orders.

1-53 (m) A representative of the department ~~[commission]~~ or a
1-54 municipal air conditioning or refrigeration inspector within the
1-55 jurisdiction of the municipality may issue a citation to a person
1-56 who violates Section 10(e) or (f) of this Act.

1-57 SECTION 4. Section 3B, Air Conditioning and Refrigeration
1-58 Contractor License Law (Article 8861, Vernon's Texas Civil
1-59 Statutes), is amended to read as follows:

1-60 Sec. 3B. LICENSE REQUIRED; CITATION. (a) Unless the person
1-61 is exempted under Section 6 of this Act, a person may not perform
1-62 air conditioning and refrigeration contracting without a license
1-63 under this Act.

1-64 (b) An air conditioning and refrigeration contracting

company must employ full time in each permanent office a license holder whose license is assigned to that company.

(c) A municipal or county official may issue a citation to an air conditioning and refrigeration contracting company that performs air conditioning and refrigeration contracting without a license issued under this Act, if the person is not exempt from the provisions of this Act.

SECTION 5. The Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes) is amended by adding Section 3C to read as follows:

Sec. 3C. ENFORCEMENT OF CONTRACTS. An air conditioning and refrigeration contracting company that performs air conditioning and refrigeration contracting without employing a licensee with the appropriate license under this Act may not collect a fee or otherwise enforce a contract for the services performed. To enforce a contract for the performance of air conditioning and refrigeration contracting, the air conditioning and refrigeration contracting company that performs the services must have been licensed at the time the contract is signed and at the time the work is performed.

SECTION 6. Sections 4(f) and (g), Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), are amended to read as follows:

(f) The application must be made on a form prescribed by the commissioner and must specify the class of license and each endorsement the applicant seeks. The application must be verified and must be accompanied by:

(1) ~~[evidence-of-the-insurance-coverage-required-under this-Act,~~

[+2] a statement of the applicant's practical experience; and

(2) [+3] the examination fee.

(g) The executive director ~~[commissioner]~~ shall issue an air conditioning and refrigeration contractor license to an applicant who possesses the required qualifications, passes the appropriate examinations, furnishes evidence of the insurance coverage required under this Act, and pays the ~~[examination--fee--and--the]~~ original license fee required by this Act. An applicant who fails an examination is eligible for reexamination.

SECTION 7. Section 5(a), Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) A violation of this Act or a rule adopted under this Act is a ground for the denial, suspension, or revocation of a license issued under this Act. The failure to provide proper installation, service, or ~~[and]~~ mechanical integrity under this Act constitutes a violation of this Act. An intentional or knowing misrepresentation of necessary services, services to be provided, or services that have been provided, or a fraudulent promise made to influence, persuade, or induce an individual to contract for services constitutes a violation of this Act and a ground for the suspension or revocation of a license issued under this Act.

SECTION 8. Section 6(a), Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) This Act does not apply to a person who:

(1) performs air conditioning and refrigeration contracting in a building owned solely by him as his home;

(2) performs air conditioning or refrigeration maintenance work if (i) the person is a maintenance man or maintenance engineer who is a regular bona fide employee of the property owner, the property lessee, or the management company managing the property where the maintenance work is being performed, (ii) the work is performed in connection with the business in which the person is employed, and (iii) the person and the person's employer referred to in (i) above do not engage in the occupation of air conditioning and refrigeration contracting for the general public;

(3) performs air conditioning and refrigeration

contracting and is regularly employed by a regulated electric or gas utility;

(4) is licensed as a professional engineer under The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes), performs work in connection with the business in which the person is employed, and does not engage in the practice of air conditioning and refrigeration contracting for the general public;

(5) performs process cooling or heating work for an industrial operation such as a chemical plant, petrochemical plant, refinery, natural gas plant, or natural gas treating plant when employed by that operation;

(6) performs air conditioning and refrigeration contracting on:

(A) a portable or self-contained ductless air conditioning [~~or-refrigeration~~] product that has a cooling capacity of three tons or less;

(B) a portable or self-contained heating product that does not require the forced movement of air outside the heating unit; [~~or~~]

(C) environmental air conditioning equipment that is intended for temporary use and is not fixed in place; or

(D) residential refrigerators, freezers, and ice machines; or

(7) performs air conditioning services only on a motor vehicle air conditioning unit or who employs a person who performs air conditioning services only on a motor vehicle air conditioning unit.

SECTION 9. Section 7, Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 7. REPORTING REQUIREMENT. (a) Each person licensed under this Act shall notify the municipal authority who has control of the enforcement of regulations relative to air conditioning and refrigeration contracting in the municipality in which the person is engaged in air conditioning and refrigeration contracting that the person has obtained a state license.

(b) The notification must be in the form required by the municipality.

(c) The amount of a fee imposed by a municipality on a contractor to provide notice under this section may be set by the municipality only in an amount reasonable and necessary to implement this section.

SECTION 10. Section 8, Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 8. PENALTY. Except as provided in Section 9, a person commits an offense if the person knowingly or intentionally engages in air conditioning and refrigeration contracting without a license issued under this Act. An offense under this section is a Class C [B] misdemeanor.

SECTION 11. Section 9, Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 9. MUNICIPAL REGULATION. (a) A license issued by a municipality of this state that complies with the requirements of this section is valid under the terms of the license within that municipality. However, a license issued [~~under this Act~~] by the department is valid throughout the state, and the holder and people under supervision are not required to hold a municipal license to practice air conditioning and refrigeration contracting in any municipality within this state.

(b) An applicant for a municipal license must:

(1) pass an examination that covers the same subjects as the examination required by the commissioner for an air conditioning and refrigeration contractor license of the class of work that the municipal applicant proposes to perform; and

(2) meet experience requirements that are at least as strict as those required under Section 4(e) of this Act for an air conditioning and refrigeration contractor license.

(c) A municipality may by ordinance adopt and enforce standards for air conditioning and refrigeration contractors that are consistent with the standards established under this Act. The municipality shall report violations of the ordinance to the commissioner not later than the 10th day after the date on which the municipality takes action to enforce the ordinance. Conviction of an offense under the municipal ordinance is a ground for the denial, suspension, or revocation of a license issued under this Act.

SECTION 12. Section 10(h), Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), is amended to read as follows:

(h) A person commits an offense if the person purchases a refrigerant or equipment containing a refrigerant in this state in violation of Subsection (c), (e), or (f) of this section. An offense under this subsection is a Class C [B] misdemeanor.

SECTION 13. Section 10, Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), is amended by adding Subsection (j), to read as follows:

(j) This section does not apply to persons exempt under Section 6(a)(3), (5), or (7) of this Act.

SECTION 14. Section 23(c), The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended by adding Subdivision (4) to read as follows:

(4) In addition to the license requirements imposed under Subdivisions (1), (2), and (3) of this subsection, a business entity that inspects an environmental air conditioning system, commercial refrigeration system, or process cooling or heating system as part of a real estate inspection conducted under this Act must employ a person who holds the appropriate air conditioning and refrigeration contractor licenses and endorsements under the Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), or an appropriate municipal license. An employee who does not hold a license may perform the inspection under the direction of a licensee licensed under this Act. For purposes of this Act, "inspection" of environmental air conditioning, commercial refrigeration, and process cooling and heating equipment means an inspection that includes the use of electronic instruments, gauges, thermometers, mechanical instruments, or other meters that require direct in-line connection to the refrigeration system.

SECTION 15. (a) The change in law made to Section 8, Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.

(b) An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

SECTION 16. (a) Except as provided by Subsection (b) of this section, the change in law made to Section 9, Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), by this Act applies to a municipal license that is issued or renewed on or after the effective date of this Act. A municipality subject to that section shall adopt examination requirements in compliance with that section not later than January 1, 2000.

(b) To continue to engage in the practice of air conditioning and refrigeration contracting after September 1, 1999, a person who holds a municipal license on the effective date of this Act must satisfy the examination requirements imposed under Section 9(b), Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), as amended by this Act, not later than June 1, 2000.

SECTION 17. (a) This Act takes effect September 1, 1999.

(b) Not later than December 31, 1999, the commissioner of

5-1 licensing and regulation shall adopt rules as required by Section
5-2 3C, Air Conditioning and Refrigeration Contractor License Law
5-3 (Article 8861, Vernon's Texas Civil Statutes), as added by this
5-4 Act.

5-5 (c) Section 23(c), The Real Estate License Act (Article
5-6 6573a, Vernon's Texas Civil Statutes), as amended by this Act,
5-7 applies only to a real estate inspection that is conducted on or
5-8 after the effective date of this Act. A real estate inspection
5-9 conducted before that date is governed by the law in effect on the
5-10 date that the inspection occurs, and the former law is continued in
5-11 effect for that purpose.

5-12 SECTION 18. The importance of this legislation and the
5-13 crowded condition of the calendars in both houses create an
5-14 emergency and an imperative public necessity that the
5-15 constitutional rule requiring bills to be read on three several
5-16 days in each house be suspended, and this rule is hereby suspended.

5-17 * * * * *

**FAVORABLE
SENATE COMMITTEE REPORT ON**

SB SCR SJR SR (HB) HCR HJR 1822
By Senator Carona
(Author/Senate Sponsor)
5/14/99
(date)

We, your Committee on ECONOMIC DEVELOPMENT, to which was referred the attached measure, have on May 13, 1999, had the same under consideration and I am instructed to report it back with the recommendation (s) that it:

- ☒ do pass and be printed
() do pass and be ordered not printed
() and is recommended for placement on the Local and Uncontested Bills Calendar.

A fiscal note was requested. () yes () no

A revised fiscal note was requested. () yes () no

An actuarial analysis was requested. () yes () no

Considered by subcommittee. () yes () no

The measure was reported from Committee by the following vote:

	YEA	NAY	ABSENT	PNV
Senator David Sibley, Chairman	✓			
Senator Ken Armbrister, Vice-Chairman	✓			
Senator John Carona	✓			
Senator Troy Fraser	✓			
Senator Mike Jackson	✓			
Senator Frank Madla	✓			
Senator John Whitmire	✓			
TOTAL VOTES	7	0	0	0

COMMITTEE ACTION

S260 Considered in public hearing
S270 Testimony taken

Barbara Henderson
COMMITTEE CLERK

David Sibley
CHAIRMAN

WITNESS LIST

HB 1822
SENATE COMMITTEE REPORT
Economic Development Committee

May 13, 1999 - 3:00P

Registering, but not testifying:

For: Johnson, Stan (Stan's Heating & Air Cond., Inc./Tx. Air Cond.
Contractors Assn), Austin

Jones, Nancy (Texas Air Conditioning Contractors Assn.), Austin

BILL ANALYSIS

Senate Research Center

H.B. 1822
By: Yarbrough (Carona)
Economic Development
5/12/1999
Engrossed

DIGEST

Currently, the Air Conditioning and Refrigeration Contractor License Act requires any air conditioning and refrigeration contractor doing business in Texas to hold either a municipal or state license. H.B. 1822 clarifies provisions of the Act and strengthens penalties for operating as a contractor without a license.

PURPOSE

As proposed, H.B. 1822 regulates air conditioning and refrigeration contractors and provides penalties.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 2(7) and (9), Article 8861, V.T.C.S. (Air Conditioning and Refrigeration Contractor License Law), to redefine "air conditioning and refrigeration contracting."

SECTION 2. Amends Section 2, Article 8861, V.T.C.S., to define "air conditioning and refrigeration contracting company."

SECTION 3. Amends Sections 3(b) and (m), Article 8861, V.T.C.S., to authorize the executive director of the Texas Commission of Licensing and Regulations, rather than the commissioner, to issue certain orders as necessary to enforce this Act. Authorizes the executive director to issue cease and desist orders. Provides that a representative of the Texas Department of Licensing and Regulations, rather than the commission, or a municipal air conditioning or refrigeration inspector within the jurisdiction of the municipality to issue a citation to a person who violates Section 10(e) or (f) of this Act.

SECTION 4. Amends Section 3B, Article 8861, V.T.C.S., as follow:

Sec. 3B. New heading: LICENSE REQUIRED CITATION. Require an air conditioning and refrigeration contracting company to employ full time in each permanent office a licensing holder whose license is assigned to that company. Authorizes a municipal or county official to issue a citation to an air conditioning and refrigeration contracting company that performs air conditioning and refrigeration contracting without a license issued under this Act, if the person is not exempt from the provisions of this Act.

SECTION 5. Amends Article 8861, V.T.C.S., by adding Section 3C, as follows:

Sec. 3C. New heading: ENFORCEMENT OF CONTRACTS. Prohibits a air conditioning and contracting company (company) from collecting a fee or enforcing a contract for services performed with employing a licensee with the appropriate license. Requires a company that performs services to have been licensed at the time the contract is signed and at the time the work is performed, to enforce a contract for the performance of air conditioning and refrigeration contracting.

SECTION 6. Amends Section 4(f) and (g), Article 8861, V.T.C.S., to make conforming changes.

SECTION 7. Amend Section 5(a), Article 8861, V.T.C.S., to provide that the failure to provide proper installation service or, rather than and, mechanical integrity under this Act constitutes a violation of this

Act.

SECTION 8. Amends Section 6(a), Article 8861, V.T.C.S., to provide that this Act does not apply to persons who perform air conditioning and refrigeration contracting on residential refrigerators, freezers, and ice machines.

SECTION 9. Amends Section 7, Article 8861, V.T.C.S., to authorize the amount of a fee imposed by a municipality on a contractor to provide notice under this Section to be set by the municipality only in an amount reasonable and necessary to implement this section.

SECTION 10. Amends Section 8, Article 8861, V.T.C.S., to provide that under this Subsection a certain offense is a Class C, rather than B, misdemeanor.

SECTION 11. Amends Section 9, Article 8861, V.T.C.S., to provide a license issued by a municipality of this state that complies with the requirements of this section is a valid under the terms of the license within that municipality. Provides that a license issued by the department, rather than under this Act, is valid throughout the state. Requires an applicant for a municipal license to meet certain requirements.

SECTION 12. Amends Section 10(h), Article 8861, V.T.C.S., to make conforming change.

SECTION 13. Amends Section 10, Article 8861, V.T.C.S., to provide that this section does not apply to persons exempt under Section 6(a)(3), (5), or (7) of this Act.

SECTION 14. Amends Section 23(c), Article 6573a, V.T.C.S., by adding Subsection (4), to require a business entity that inspects an environmental air conditioning system, commercial refrigeration system, or process cooling and heating system, commercial refrigeration system, or process cooling and heating system as part of a real estate inspection to employ a person who holds an appropriate air conditioning and refrigeration contracting license. Authorizes a person who does not hold an appropriate license to perform an inspection under the direction of a license holder. Defines "inspection."

SECTION 15. Makes application of this Act prospective.

SECTION 16. (a) Provided that the change in law made to Section 9, Article 8861, V.T.C.S., by this Act applies to a municipal license issued or renewed on or after the effective date of this Act. Requires a municipality subject to that section to adopt examinations requirements in compliance with that section not later than January 1, 2000.

(b) Requires a person who holds a municipal license on the effective date of this Act to satisfy the examination requirements imposed under Section 9(b), Article 8861, V.T.C.S., as added by this Act, not later than June 1, 2000, to continue to engage in the practice of air conditioning and refrigeration contracting after the September 1, 1999.

SECTION 17. (a) Effective date: September 1, 1999.

(b) Requires the commissioner of licensing and regulation to adopt rules as required by Section 3C, Article 8861, V.T.C.S., as added by this Act, not later than December 31, 1999.

(c) Makes application of Section 23(c), Article 6573a, V.T.C.S., prospective.

SECTION 18. Emergency clause.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 76th Regular Session

March 21, 1999

TO: Honorable Ron Wilson, Chair, House Committee on Licensing & Administrative Procedures

FROM: John Keel, Director, Legislative Budget Board

IN RE: **HB1822** by Yarbrough (relating to the regulation of air conditioning and refrigeration contractors; providing penalties), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.
--

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: JK, TH, CB

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 76th Regular Session

March 12, 1999

TO: Honorable Ron Wilson, Chair, House Committee on Licensing & Administrative Procedures

FROM: John Keel, Director, Legislative Budget Board

IN RE: HB1822 by Yarbrough (Relating to the regulation of air conditioning and refrigeration contractors; providing penalties), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 452 Department of Licensing and Regulation

LBB Staff: JK, TH, CB

ADOPTED

MAY 19 1999

John J. Caron
Secretary of the Senate

FLOOR AMENDMENT NO. 1

BY

Caron

Amend H.B. 1822 as follows:

- (1) Strike Section 14 of the bill and renumber the subsequent sections appropriately.
- (2) In Section 17 of the bill on page 5, line 5, strike the entirety of subsection (c).

SENATE AMENDMENTS

2nd Printing

99 MAY 20 AM 9:19

HOUSE OF REPRESENTATIVES

By Yarbrough

H.B. No. 1822

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of air conditioning and refrigeration contractors; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 2(7) and (9), Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), are amended to read as follows:

(7) "Air conditioning and refrigeration maintenance work" means repair work and all other work required for the continued normal performance of an environmental air conditioning system, commercial refrigeration system or equipment, or process cooling or heating system. The term does not include the installation of a total replacement of the system or the installation or repair of boilers or pressure vessels that must be installed ~~[by-licensed-persons]~~ pursuant to rules and regulations adopted by the commissioner under Chapter 755, Health and Safety Code.

(9) "Air conditioning and refrigeration contracting" means to perform or offer to perform the design, installation, construction, maintenance, service, repair, alteration, or modification of a product or of equipment in environmental air conditioning, commercial refrigeration, or process cooling or heating systems.

SECTION 2. Section 2, Air Conditioning and Refrigeration

Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), is amended by adding Subdivision (14) to read as follows:

(14) "Air conditioning and refrigeration contracting company" means any person, sole proprietorship, corporation, partnership, association, or other business entity that performs or offers to perform air conditioning and refrigeration contracting to the general public.

SECTION 3. Sections 3(b) and (m), Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) The executive director [~~commissioner~~] may issue an emergency order as necessary to enforce this Act if the executive director [~~commissioner~~] determines that an emergency exists requiring immediate action to protect the public health and safety. The order may be issued without notice and hearing or with any notice and hearing that the executive director [~~commissioner~~] considers practicable under the circumstances. If an emergency order is issued under this subsection without a hearing, the executive director [~~commissioner~~] shall set the time and place for a hearing to affirm, modify, or set aside the emergency order. The executive director may issue cease and desist orders.

(m) A representative of the department [~~commission~~] or a municipal air conditioning or refrigeration inspector within the jurisdiction of the municipality may issue a citation to a person who violates Section 10(e) or (f) of this Act.

SECTION 4. Section 3B, Air Conditioning and Refrigeration

1 Contractor License Law (Article 8861, Vernon's Texas Civil
2 Statutes), is amended to read as follows:

3 Sec. 3B. LICENSE REQUIRED; CITATION. (a) Unless the person
4 is exempted under Section 6 of this Act, a person may not perform
5 air conditioning and refrigeration contracting without a license
6 under this Act.

7 (b) An air conditioning and refrigeration contracting
8 company must employ full time in each permanent office a license
9 holder whose license is assigned to that company.

10 (c) A municipal or county official may issue a citation to
11 an air conditioning and refrigeration contracting company that
12 performs air conditioning and refrigeration contracting without a
13 license issued under this Act, if the person is not exempt from the
14 provisions of this Act.

15 SECTION 5. The Air Conditioning and Refrigeration Contractor
16 License Law (Article 8861, Vernon's Texas Civil Statutes) is
17 amended by adding Section 3C to read as follows:

18 Sec. 3C. ENFORCEMENT OF CONTRACTS. An air conditioning and
19 refrigeration contracting company that performs air conditioning
20 and refrigeration contracting without employing a licensee with the
21 appropriate license under this Act may not collect a fee or
22 otherwise enforce a contract for the services performed. To
23 enforce a contract for the performance of air conditioning and
24 refrigeration contracting, the air conditioning and refrigeration
25 contracting company that performs the services must have been
26 licensed at the time the contract is signed and at the time the
27 work is performed.

1 SECTION 6. Sections 4(f) and (g), Air Conditioning and
2 Refrigeration Contractor License Law (Article 8861, Vernon's Texas
3 Civil Statutes), are amended to read as follows:

4 (f) The application must be made on a form prescribed by the
5 commissioner and must specify the class of license and each
6 endorsement the applicant seeks. The application must be verified
7 and must be accompanied by:

8 (1) ~~[evidence-of-the-insurance-coverage-required-under~~
9 ~~this-Act]~~

10 [+2+] a statement of the applicant's practical
11 experience; and

12 (2) [+3+] the examination fee.

13 (g) The executive director ~~[commissioner]~~ shall issue an air
14 conditioning and refrigeration contractor license to an applicant
15 who possesses the required qualifications, passes the appropriate
16 examinations, furnishes evidence of the insurance coverage required
17 under this Act, and pays the ~~[examination--fee--and--the]~~ original
18 license fee required by this Act. An applicant who fails an
19 examination is eligible for reexamination.

20 SECTION 7. Section 5(a), Air Conditioning and Refrigeration
21 Contractor License Law (Article 8861, Vernon's Texas Civil
22 Statutes), is amended to read as follows:

23 (a) A violation of this Act or a rule adopted under this Act
24 is a ground for the denial, suspension, or revocation of a license
25 issued under this Act. The failure to provide proper installation,
26 service, or ~~[and]~~ mechanical integrity under this Act constitutes a
27 violation of this Act. An intentional or knowing misrepresentation

1 of necessary services, services to be provided, or services that
2 have been provided, or a fraudulent promise made to influence,
3 persuade, or induce an individual to contract for services
4 constitutes a violation of this Act and a ground for the suspension
5 or revocation of a license issued under this Act.

6 SECTION 8. Section 6(a), Air Conditioning and Refrigeration
7 Contractor License Law (Article 8861, Vernon's Texas Civil
8 Statutes), is amended to read as follows:

9 (a) This Act does not apply to a person who:

10 (1) performs air conditioning and refrigeration
11 contracting in a building owned solely by him as his home;

12 (2) performs air conditioning or refrigeration
13 maintenance work if (i) the person is a maintenance man or
14 maintenance engineer who is a regular bona fide employee of the
15 property owner, the property lessee, or the management company
16 managing the property where the maintenance work is being
17 performed, (ii) the work is performed in connection with the
18 business in which the person is employed, and (iii) the person and
19 the person's employer referred to in (i) above do not engage in the
20 occupation of air conditioning and refrigeration contracting for
21 the general public;

22 (3) performs air conditioning and refrigeration
23 contracting and is regularly employed by a regulated electric or
24 gas utility;

25 (4) is licensed as a professional engineer under The
26 Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil
27 Statutes), performs work in connection with the business in which

1 the person is employed, and does not engage in the practice of air
2 conditioning and refrigeration contracting for the general public;

3 (5) performs process cooling or heating work for an
4 industrial operation such as a chemical plant, petrochemical plant,
5 refinery, natural gas plant, or natural gas treating plant when
6 employed by that operation;

7 (6) performs air conditioning and refrigeration
8 contracting on:

9 (A) a portable or self-contained ductless air
10 conditioning [~~or-refrigeration~~] product that has a cooling capacity
11 of three tons or less;

12 (B) a portable or self-contained heating product
13 that does not require the forced movement of air outside the
14 heating unit; [~~or~~]

15 (C) environmental air conditioning equipment
16 that is intended for temporary use and is not fixed in place; or

17 (D) residential refrigerators, freezers, and ice
18 machines; or

19 (7) performs air conditioning services only on a motor
20 vehicle air conditioning unit or who employs a person who performs
21 air conditioning services only on a motor vehicle air conditioning
22 unit.

23 SECTION 9. Section 7, Air Conditioning and Refrigeration
24 Contractor License Law (Article 8861, Vernon's Texas Civil
25 Statutes), is amended to read as follows:

26 Sec. 7. REPORTING REQUIREMENT. (a) Each person licensed
27 under this Act shall notify the municipal authority who has control

1 of the enforcement of regulations relative to air conditioning and
2 refrigeration contracting in the municipality in which the person
3 is engaged in air conditioning and refrigeration contracting that
4 the person has obtained a state license.

5 (b) The notification must be in the form required by the
6 municipality.

7 (c) The amount of a fee imposed by a municipality on a
8 contractor to provide notice under this section may be set by the
9 municipality only in an amount reasonable and necessary to
10 implement this section.

11 SECTION 10. Section 8, Air Conditioning and Refrigeration
12 Contractor License Law (Article 8861, Vernon's Texas Civil
13 Statutes), is amended to read as follows:

14 Sec. 8. PENALTY. Except as provided in Section 9, a person
15 commits an offense if the person knowingly or intentionally engages
16 in air conditioning and refrigeration contracting without a license
17 issued under this Act. An offense under this section is a Class C
18 [B] misdemeanor.

19 SECTION 11. Section 9, Air Conditioning and Refrigeration
20 Contractor License Law (Article 8861, Vernon's Texas Civil
21 Statutes), is amended to read as follows:

22 Sec. 9. MUNICIPAL REGULATION. (a) A license issued by a
23 municipality of this state that complies with the requirements of
24 this section is valid under the terms of the license within that
25 municipality. However, a license issued [~~under this Act~~] by the
26 department is valid throughout the state, and the holder and people
27 under supervision are not required to hold a municipal license to

1 practice air conditioning and refrigeration contracting in any
2 municipality within this state.

3 (b) An applicant for a municipal license must:

4 (1) pass an examination that covers the same subjects
5 as the examination required by the commissioner for an air
6 conditioning and refrigeration contractor license of the class of
7 work that the municipal applicant proposes to perform; and

8 (2) meet experience requirements that are at least as
9 strict as those required under Section 4(e) of this Act for an air
10 conditioning and refrigeration contractor license.

11 (c) A municipality may by ordinance adopt and enforce
12 standards for air conditioning and refrigeration contractors that
13 are consistent with the standards established under this Act. The
14 municipality shall report violations of the ordinance to the
15 commissioner not later than the 10th day after the date on which
16 the municipality takes action to enforce the ordinance. Conviction
17 of an offense under the municipal ordinance is a ground for the
18 denial, suspension, or revocation of a license issued under this
19 Act.

20 SECTION 12. Section 10(h), Air Conditioning and
21 Refrigeration Contractor License Law (Article 8861, Vernon's Texas
22 Civil Statutes), is amended to read as follows:

23 (h) A person commits an offense if the person purchases a
24 refrigerant or equipment containing a refrigerant in this state in
25 violation of Subsection (c), (e), or (f) of this section. An
26 offense under this subsection is a Class C [B] misdemeanor.

27 SECTION 13. Section 10, Air Conditioning and Refrigeration

1 Contractor License Law (Article 8861, Vernon's Texas Civil
2 Statutes), is amended by adding Subsection (j), to read as follows:

3 (j) This section does not apply to persons exempt under
4 Section 6(a)(3), (5), or (7) of this Act.

5 SECTION 14. Section 23(c), The Real Estate License Act
6 (Article 6573a, Vernon's Texas Civil Statutes), is amended by
7 adding Subdivision (4) to read as follows:

8 (4) In addition to the license requirements imposed
9 under Subdivisions (1), (2), and (3) of this subsection, a business
10 entity that inspects an environmental air conditioning system,
11 commercial refrigeration system, or process cooling or heating
12 system as part of a real estate inspection conducted under this Act
13 must employ a person who holds the appropriate air conditioning
14 and refrigeration contractor licenses and endorsements under the
15 Air Conditioning and Refrigeration Contractor License Law (Article
16 8861, Vernon's Texas Civil Statutes), or an appropriate municipal
17 license. An employee who does not hold a license may perform the
18 inspection under the direction of a licensee licensed under this
19 Act. For purposes of this Act, "inspection" of environmental air
20 conditioning, commercial refrigeration, and process cooling and
21 heating equipment means an inspection that includes the use of
22 electronic instruments, gauges, thermometers, mechanical
23 instruments, or other meters that require direct in-line connection
24 to the refrigeration system.

25 SECTION 15. (a) The change in law made to Section 8, Air
26 Conditioning and Refrigeration Contractor License Law (Article
27 8861, Vernon's Texas Civil Statutes), by this Act applies only to

1 an offense committed on or after the effective date of this Act.
2 For purposes of this section, an offense is committed before the
3 effective date of this Act if any element of the offense occurs
4 before that date.

5 (b) An offense committed before the effective date of this
6 Act is governed by the law in effect when the offense was
7 committed, and the former law is continued in effect for that
8 purpose.

9 SECTION 16. (a) Except as provided by Subsection (b) of
10 this section, the change in law made to Section 9, Air Conditioning
11 and Refrigeration Contractor License Law (Article 8861, Vernon's
12 Texas Civil Statutes), by this Act applies to a municipal license
13 that is issued or renewed on or after the effective date of this
14 Act. A municipality subject to that section shall adopt
15 examination requirements in compliance with that section not later
16 than January 1, 2000.

17 (b) To continue to engage in the practice of air
18 conditioning and refrigeration contracting after September 1, 1999,
19 a person who holds a municipal license on the effective date of
20 this Act must satisfy the examination requirements imposed under
21 Section 9(b), Air Conditioning and Refrigeration Contractor License
22 Law (Article 8861, Vernon's Texas Civil Statutes), as amended by
23 this Act, not later than June 1, 2000.

24 SECTION 17. (a) This Act takes effect September 1, 1999.

25 (b) Not later than December 31, 1999, the commissioner of
26 licensing and regulation shall adopt rules as required by Section
27 3C, Air Conditioning and Refrigeration Contractor License Law

1 (Article 8861, Vernon's Texas Civil Statutes), as added by this
2 Act.

3 (c) Section 23(c), The Real Estate License Act (Article
4 6573a, Vernon's Texas Civil Statutes), as amended by this Act,
5 applies only to a real estate inspection that is conducted on or
6 after the effective date of this Act. A real estate inspection
7 conducted before that date is governed by the law in effect on the
8 date that the inspection occurs, and the former law is continued in
9 effect for that purpose.

10 SECTION 18. The importance of this legislation and the
11 crowded condition of the calendars in both houses create an
12 emergency and an imperative public necessity that the
13 constitutional rule requiring bills to be read on three several
14 days in each house be suspended, and this rule is hereby suspended.

ADOPTED

MAY 19 1999

Letty Stoney
Secretary of the Senate

FLOOR AMENDMENT NO. 1

BY *Carson*

Amend H.B. 1822 as follows:

(1) Strike Section 14 of the bill and renumber the subsequent sections appropriately.

(2) In Section 17 of the bill on page 5, line 5, strike the entirety of subsection (c).

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 76th Regular Session

March 21, 1999

TO: Honorable Ron Wilson, Chair, House Committee on Licensing & Administrative Procedures

FROM: John Keel, Director, Legislative Budget Board

IN RE: **HB1822** by Yarbrough (relating to the regulation of air conditioning and refrigeration contractors; providing penalties), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.
--

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: JK, TH, CB

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 76th Regular Session

March 12, 1999

TO: Honorable Ron Wilson, Chair, House Committee on Licensing & Administrative Procedures

FROM: John Keel, Director, Legislative Budget Board

IN RE: HB1822 by Yarbrough (Relating to the regulation of air conditioning and refrigeration contractors; providing penalties), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 452 Department of Licensing and Regulation

LBB Staff: JK, TH, CB

ENROLLED

H.B. No. 1822

AN ACT

relating to the regulation of air conditioning and refrigeration contractors; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 2(7) and (9), Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), are amended to read as follows:

(7) "Air conditioning and refrigeration maintenance work" means repair work and all other work required for the continued normal performance of an environmental air conditioning system, commercial refrigeration system or equipment, or process cooling or heating system. The term does not include the installation of a total replacement of the system or the installation or repair of boilers or pressure vessels that must be installed [~~by-licensed-persons~~] pursuant to rules and regulations adopted by the commissioner under Chapter 755, Health and Safety Code.

(9) "Air conditioning and refrigeration contracting" means to perform or offer to perform the design, installation, construction, maintenance, service, repair, alteration, or modification of a product or of equipment in environmental air conditioning, commercial refrigeration, or process cooling or heating systems.

SECTION 2. Section 2, Air Conditioning and Refrigeration

Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), is amended by adding Subdivision (14) to read as follows:

(14) "Air conditioning and refrigeration contracting company" means any person, sole proprietorship, corporation, partnership, association, or other business entity that performs or offers to perform air conditioning and refrigeration contracting to the general public.

SECTION 3. Sections 3(b) and (m), Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) The executive director [~~commissioner~~] may issue an emergency order as necessary to enforce this Act if the executive director [~~commissioner~~] determines that an emergency exists requiring immediate action to protect the public health and safety. The order may be issued without notice and hearing or with any notice and hearing that the executive director [~~commissioner~~] considers practicable under the circumstances. If an emergency order is issued under this subsection without a hearing, the executive director [~~commissioner~~] shall set the time and place for a hearing to affirm, modify, or set aside the emergency order. The executive director may issue cease and desist orders.

(m) A representative of the department [~~commission~~] or a municipal air conditioning or refrigeration inspector within the jurisdiction of the municipality may issue a citation to a person who violates Section 10(e) or (f) of this Act.

SECTION 4. Section 3B, Air Conditioning and Refrigeration

1 Contractor License Law (Article 8861, Vernon's Texas Civil
2 Statutes), is amended to read as follows:

3 Sec. 3B. LICENSE REQUIRED; CITATION. (a) Unless the person
4 is exempted under Section 6 of this Act, a person may not perform
5 air conditioning and refrigeration contracting without a license
6 under this Act.

7 (b) An air conditioning and refrigeration contracting
8 company must employ full time in each permanent office a license
9 holder whose license is assigned to that company.

10 (c) A municipal or county official may issue a citation to
11 an air conditioning and refrigeration contracting company that
12 performs air conditioning and refrigeration contracting without a
13 license issued under this Act, if the person is not exempt from the
14 provisions of this Act.

15 SECTION 5. The Air Conditioning and Refrigeration Contractor
16 License Law (Article 8861, Vernon's Texas Civil Statutes) is
17 amended by adding Section 3C to read as follows:

18 Sec. 3C. ENFORCEMENT OF CONTRACTS. An air conditioning and
19 refrigeration contracting company that performs air conditioning
20 and refrigeration contracting without employing a licensee with the
21 appropriate license under this Act may not collect a fee or
22 otherwise enforce a contract for the services performed. To
23 enforce a contract for the performance of air conditioning and
24 refrigeration contracting, the air conditioning and refrigeration
25 contracting company that performs the services must have been
26 licensed at the time the contract is signed and at the time the
27 work is performed.

1 SECTION 6. Sections 4(f) and (g), Air Conditioning and
2 Refrigeration Contractor License Law (Article 8861, Vernon's Texas
3 Civil Statutes), are amended to read as follows:

4 (f) The application must be made on a form prescribed by the
5 commissioner and must specify the class of license and each
6 endorsement the applicant seeks. The application must be verified
7 and must be accompanied by:

8 (1) ~~[evidence-of-the-insurance-coverage-required-under~~
9 ~~this-Act,~~

10 [+2+] a statement of the applicant's practical
11 experience; and

12 (2) [+3+] the examination fee.

13 (g) The executive director ~~[commissioner]~~ shall issue an air
14 conditioning and refrigeration contractor license to an applicant
15 who possesses the required qualifications, passes the appropriate
16 examinations, furnishes evidence of the insurance coverage required
17 under this Act, and pays the ~~[examination--fee--and--the]~~ original
18 license fee required by this Act. An applicant who fails an
19 examination is eligible for reexamination.

20 SECTION 7. Section 5(a), Air Conditioning and Refrigeration
21 Contractor License Law (Article 8861, Vernon's Texas Civil
22 Statutes), is amended to read as follows:

23 (a) A violation of this Act or a rule adopted under this Act
24 is a ground for the denial, suspension, or revocation of a license
25 issued under this Act. The failure to provide proper installation,
26 service, or ~~[and]~~ mechanical integrity under this Act constitutes a
27 violation of this Act. An intentional or knowing misrepresentation

1 of necessary services, services to be provided, or services that
2 have been provided, or a fraudulent promise made to influence,
3 persuade, or induce an individual to contract for services
4 constitutes a violation of this Act and a ground for the suspension
5 or revocation of a license issued under this Act.

6 SECTION 8. Section 6(a), Air Conditioning and Refrigeration
7 Contractor License Law (Article 8861, Vernon's Texas Civil
8 Statutes), is amended to read as follows:

9 (a) This Act does not apply to a person who:

10 (1) performs air conditioning and refrigeration
11 contracting in a building owned solely by him as his home;

12 (2) performs air conditioning or refrigeration
13 maintenance work if (i) the person is a maintenance man or
14 maintenance engineer who is a regular bona fide employee of the
15 property owner, the property lessee, or the management company
16 managing the property where the maintenance work is being
17 performed, (ii) the work is performed in connection with the
18 business in which the person is employed, and (iii) the person and
19 the person's employer referred to in (i) above do not engage in the
20 occupation of air conditioning and refrigeration contracting for
21 the general public;

22 (3) performs air conditioning and refrigeration
23 contracting and is regularly employed by a regulated electric or
24 gas utility;

25 (4) is licensed as a professional engineer under The
26 Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil
27 Statutes), performs work in connection with the business in which

1 the person is employed, and does not engage in the practice of air
2 conditioning and refrigeration contracting for the general public;

3 (5) performs process cooling or heating work for an
4 industrial operation such as a chemical plant, petrochemical plant,
5 refinery, natural gas plant, or natural gas treating plant when
6 employed by that operation;

7 (6) performs air conditioning and refrigeration
8 contracting on:

9 (A) a portable or self-contained ductless air
10 conditioning [~~or-refrigeration~~] product that has a cooling capacity
11 of three tons or less;

12 (B) a portable or self-contained heating product
13 that does not require the forced movement of air outside the
14 heating unit; [~~or~~]

15 (C) environmental air conditioning equipment
16 that is intended for temporary use and is not fixed in place; or

17 (D) residential refrigerators, freezers, and ice
18 machines; or

19 (7) performs air conditioning services only on a motor
20 vehicle air conditioning unit or who employs a person who performs
21 air conditioning services only on a motor vehicle air conditioning
22 unit.

23 SECTION 9. Section 7, Air Conditioning and Refrigeration
24 Contractor License Law (Article 8861, Vernon's Texas Civil
25 Statutes), is amended to read as follows:

26 Sec. 7. REPORTING REQUIREMENT. (a) Each person licensed
27 under this Act shall notify the municipal authority who has control

1 of the enforcement of regulations relative to air conditioning and
2 refrigeration contracting in the municipality in which the person
3 is engaged in air conditioning and refrigeration contracting that
4 the person has obtained a state license.

5 (b) The notification must be in the form required by the
6 municipality.

7 (c) The amount of a fee imposed by a municipality on a
8 contractor to provide notice under this section may be set by the
9 municipality only in an amount reasonable and necessary to
10 implement this section.

11 SECTION 10. Section 8, Air Conditioning and Refrigeration
12 Contractor License Law (Article 8861, Vernon's Texas Civil
13 Statutes), is amended to read as follows:

14 Sec. 8. PENALTY. Except as provided in Section 9, a person
15 commits an offense if the person knowingly or intentionally engages
16 in air conditioning and refrigeration contracting without a license
17 issued under this Act. An offense under this section is a Class C
18 [B] misdemeanor.

19 SECTION 11. Section 9, Air Conditioning and Refrigeration
20 Contractor License Law (Article 8861, Vernon's Texas Civil
21 Statutes), is amended to read as follows:

22 Sec. 9. MUNICIPAL REGULATION. (a) A license issued by a
23 municipality of this state that complies with the requirements of
24 this section is valid under the terms of the license within that
25 municipality. However, a license issued [~~under this Act~~] by the
26 department is valid throughout the state, and the holder and people
27 under supervision are not required to hold a municipal license to

1 practice air conditioning and refrigeration contracting in any
2 municipality within this state.

3 (b) An applicant for a municipal license must:

4 (1) pass an examination that covers the same subjects
5 as the examination required by the commissioner for an air
6 conditioning and refrigeration contractor license of the class of
7 work that the municipal applicant proposes to perform; and

8 (2) meet experience requirements that are at least as
9 strict as those required under Section 4(e) of this Act for an air
10 conditioning and refrigeration contractor license.

11 (c) A municipality may by ordinance adopt and enforce
12 standards for air conditioning and refrigeration contractors that
13 are consistent with the standards established under this Act. The
14 municipality shall report violations of the ordinance to the
15 commissioner not later than the 10th day after the date on which
16 the municipality takes action to enforce the ordinance. Conviction
17 of an offense under the municipal ordinance is a ground for the
18 denial, suspension, or revocation of a license issued under this
19 Act.

20 SECTION 12. Section 10(h), Air Conditioning and
21 Refrigeration Contractor License Law (Article 8861, Vernon's Texas
22 Civil Statutes), is amended to read as follows:

23 (h) A person commits an offense if the person purchases a
24 refrigerant or equipment containing a refrigerant in this state in
25 violation of Subsection (c), (e), or (f) of this section. An
26 offense under this subsection is a Class C [B] misdemeanor.

27 SECTION 13. Section 10, Air Conditioning and Refrigeration

1 Contractor License Law (Article 8861, Vernon's Texas Civil
2 Statutes), is amended by adding Subsection (j), to read as follows:

3 (j) This section does not apply to persons exempt under
4 Section 6(a)(3), (5), or (7) of this Act.

5 SECTION 14. (a) The change in law made to Section 8, Air
6 Conditioning and Refrigeration Contractor License Law (Article
7 8861, Vernon's Texas Civil Statutes), by this Act applies only to
8 an offense committed on or after the effective date of this Act.
9 For purposes of this section, an offense is committed before the
10 effective date of this Act if any element of the offense occurs
11 before that date.

12 (b) An offense committed before the effective date of this
13 Act is governed by the law in effect when the offense was
14 committed, and the former law is continued in effect for that
15 purpose.

16 SECTION 15. (a) Except as provided by Subsection (b) of
17 this section, the change in law made to Section 9, Air Conditioning
18 and Refrigeration Contractor License Law (Article 8861, Vernon's
19 Texas Civil Statutes), by this Act applies to a municipal license
20 that is issued or renewed on or after the effective date of this
21 Act. A municipality subject to that section shall adopt
22 examination requirements in compliance with that section not later
23 than January 1, 2000.

24 (b) To continue to engage in the practice of air
25 conditioning and refrigeration contracting after September 1, 1999,
26 a person who holds a municipal license on the effective date of
27 this Act must satisfy the examination requirements imposed under

1 Section 9(b), Air Conditioning and Refrigeration Contractor License
2 Law (Article 8861, Vernon's Texas Civil Statutes), as amended by
3 this Act, not later than June 1, 2000.

4 SECTION 16. (a) This Act takes effect September 1, 1999.

5 (b) Not later than December 31, 1999, the commissioner of
6 licensing and regulation shall adopt rules as required by Section
7 3C, Air Conditioning and Refrigeration Contractor License Law
8 (Article 8861, Vernon's Texas Civil Statutes), as added by this
9 Act.

10 SECTION 17. The importance of this legislation and the
11 crowded condition of the calendars in both houses create an
12 emergency and an imperative public necessity that the
13 constitutional rule requiring bills to be read on three several
14 days in each house be suspended, and this rule is hereby suspended.

H.B. No. 1822

President of the Senate

Speaker of the House

I certify that H.B. No. 1822 was passed by the House on May 8, 1999, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 1822 on May 21, 1999, by a non-record vote.

Chief Clerk of the House

I certify that H.B. No. 1822 was passed by the Senate, with amendments, on May 19, 1999, by a viva-voce vote.

Secretary of the Senate

APPROVED: _____

Date

Governor

President of the Senate

Speaker of the House

I certify that H.B. No. 1822₍₁₎ was passed by the House on

May 8₍₂₎, 1999, by a non-record vote;

and that the House concurred in Senate amendments to H.B. No. 1822
on May 21₍₃₎, 1999, by a non-record vote.

Chief Clerk of the House

**** Preparation: CT47;

I certify that H.B. No. 1822₍₁₎ was passed by the Senate, with
amendments, on May 19₍₂₎, 1999, by a
viva-voce vote.

Secretary of the Senate

APPROVED:

Date

Governor

**** Preparation: CT33;

H.B. No. 1822

By Ron Garbano

**A BILL TO BE ENTITLED
AN ACT**

Relating to the regulation of air conditioning and refrigeration contractors; providing penalties.

FEB 25 1999

Filed with the Chief Clerk

MAR - 1 1999

Read first time and referred to Committee on Licensing & Administrative Procedures

MAR 18 1999

Reported ___favorably (~~as amended~~)
(as substituted)

MAR 24 1999

Sent to Committee on (Calendars)
~~(Local & Seasonal Calendars)~~

MAY 07 1999

Read second time (comm. subst.) (~~amended~~); passed to third reading (~~failed~~) by a (non-record vote) (~~record vote of _____ yeas _____ nays _____ present not voting~~)

Constitutional rule requiring bills to be read on three several days suspended (failed to suspend) by a vote of _____ yeas, _____ nays, _____ present, not voting

MAY 08 1999

Read third time ~~(amended)~~; finally passed ~~(amended)~~ by a (non-record vote)

MAY 08 1999

(b) (7)(C), (b) (7)(D), (b) (7)(F), (b) (7)(G)

Engrossed

MAY 1999

Sent to Senate

Sharon Carter

CHIEF CLERK OF THE HOUSE

OTHER HOUSE ACTION:

MAY 10 1999

Received from the House

MAY 10 1999

Read and referred to Committee on **ECONOMIC DEVELOPMENT**

MAY 14 1999

Reported favorably _____

Reported adversely, with favorable Committee Substitute; Committee Substitute read first time

Ordered not printed

Laid before the Senate

MAY 19 1999

Senate and Constitutional Rules to permit consideration suspended by (unanimous consent)

MAY 19 1999

Read second time, amended, and passed to third reading by (unanimous consent)
(a viva voce vote)
(yeas. nays)

MAY 19 1999

Senate and Constitutional 3 Day Rules suspended by a vote of 20 years, 0 days

MAY 19 1999

Read third time, _____, and passed by (a viva voce vote)
(~~yes~~ ~~no~~)

May 19, 1999 Returned to the House

Wm. F. Smith
SECRETARY OF THE SENATE

OTHER SENATE ACTION:

MAY 19 1999

Returned from the Senate (~~as substituted~~)
(with amendments)

MAY 21 1999

House concurred in Senate amendments by a (non-record vote)

(~~record vote of~~ _____ ~~yeas~~ _____ ~~nays~~ _____ ~~present, not voting~~)

House refused to concur in Senate amendments and requested the appointment of a conference committee
by a (non-record vote) (record vote of _____ yeas, _____ nays, _____ present, not voting)

House conferees appointed: _____, Chair; _____,

_____, _____, _____,

Senate granted House request. Senate conferees appointed: _____, Chair;

_____, _____, _____,

Conference committee report adopted (rejected) by the House by a (non-record vote)
(record vote of _____ yeas, _____ nays, _____ present, not voting)

Conference committee report adopted (rejected) by the Senate by a (viva voce vote)
(record vote of _____ yeas, _____ nays)

99MAY 20 AM 9:19

HOUSE OF REPRESENTATIVES

99MAY 20 AM 9:19

HOUSE OF REPRESENTATIVES